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Vol. I

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922.

No. 646.

THE AKRON, CANTON AND YOUNGSTOWN RAILWAY COMPANY, THE ANN ARBOR RAILROAD COMPANY, *ET AL.*, APPELLANTS,

vs.

THE UNITED STATES OF AMERICA, THE INTERSTATE COMMERCE COMMISSION, BOSTON & MAINE RAILROAD COMPANY, *ET AL.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED OCTOBER 12, 1922.

(29,196)

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1 District Court of the United States for the Southern District of New York.

In Equity.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY, BESSEMER & LAKE ERIE RAILROAD COMPANY, CAMBRIA & INDIANA RAILWAY COMPANY, CENTRAL INDIANA RAILWAY COMPANY, CENTRAL NEW YORK SOUTHERN RAILROAD CORPORATION, THE CENTRAL RAILROAD OF NEW JERSEY, THE CHESAPEAKE & OHIO RAILWAY COMPANY, THE CHICAGO & ALTON RAILROAD COMPANY, CHICAGO & ERIE RAILROAD COMPANY, THE CINCINNATI, INDIANAPOLIS & WESTERN RAILROAD COMPANY, THE CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILROAD COMPANY, THE DAYTON & UNION RAILROAD COMPANY, THE DELAWARE AND HUDSON COMPANY, THE DELAWARE, LACKAWANNA & WESTERN RAILROAD COMPANY, DETROIT, BAY CITY & WESTERN RAILROAD COMPANY, ERIE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, INDIANA HARBOR BELT RAILROAD COMPANY, THE KANAWHA & MICHIGAN RAILWAY COMPANY, KANAWHA & WEST VIRGINIA RAILROAD COMPANY, THE KANSAS CITY SOUTHERN RAILWAY COMPANY, THE LAKE ERIE & WESTERN RAILROAD COMPANY, THE LEHIGH & HUDSON RIVER RAILWAY COMPANY, LEHIGH & NEW ENGLAND RAILROAD COMPANY, LEHIGH VALLEY RAILROAD COMPANY, THE MICHIGAN CENTRAL RAILROAD COMPANY, MIDDLETOWN & UNIONVILLE RAILROAD COMPANY, THE MOUNT JEWETT, KINZUA & RITERVILLE RAILROAD COMPANY, THE NEW YORK, CHICAGO & ST. LOUIS RAILROAD COMPANY, NORTHAMPTON & BATH RAILROAD COMPANY, PERE MARQUETTE RAILWAY COMPANY, PHILADELPHIA & READING RAILWAY COMPANY, THE PITTSBURGH & LAKE ERIE RAILROAD COMPANY, THE PITTSBURGH & SHAWMUT RAILROAD COMPANY, THE PITTSBURGH, SHAWMUT & NORTHERN RAILROAD COMPANY AND HENRY S. HASTINGS, RECEIVER; RARITAN RIVER RAILROAD COMPANY, RICHMOND, FREDERICKSBURG & POTOMAC RAILROAD COMPANY, SUSQUEHANNA & NEW YORK RAILROAD COMPANY, THE TOLEDO & OHIO CENTRAL RAILWAY COMPANY, UNION RAILROAD COMPANY, WABASH RAILWAY COMPANY, WESTERN ALLEGHENY RAILROAD COMPANY, THE WHEELING & LAKE ERIE RAILWAY COMPANY, THE ZANESVILLE & WESTERN RAILWAY COMPANY, Petitioners,

against

THE UNITED STATES OF AMERICA, Respondent.

2 *Petition.*

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The Akron, Canton & Youngstown Railway Company, a corporation of the State of Ohio; Bessemer and Lake Erie Railroad Company, a corporation of the State of Pennsylvania; Cambria & Indiana

Railroad Company, a corporation of the State of Pennsylvania; Central Indiana Railway Company, a corporation of the State of Indiana; Central New York Southern Railroad Corporation, a corporation of the State of New York; The Central Railroad Company of New Jersey, a corporation of the State of New Jersey; The Chesapeake & Ohio Railway Company, a corporation of the State of Virginia; The Chicago & Alton Railroad Company, a corporation of the State of Illinois; Chicago & Erie Railroad Company, a corporation of the State of Indiana; The Cincinnati, Indianapolis & Western Railroad Company, a corporation of the State of Indiana; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company, a corporation of the States of Ohio and Indiana; The Dayton & Union Railroad Company, a corporation of the State of Ohio; The Delaware and Hudson Company, a corporation of the State of New York; The Delaware, Lackawanna & Western Railroad Company, a corporation of the State of Pennsylvania; Detroit, Bay City & Western Railroad Company, a corporation of the State of Michigan; Erie Railroad Company, a corporation of the State of New York; Illinois
3 Central Railroad Company, a corporation of the State of Illinois; Indiana Harbor Belt Railroad Company, a corporation of the State of Indiana; The Kanawha & Michigan Railway Company, a corporation of the States of Ohio and West Virginia; Kanawha & West Virginia Railroad Company, a corporation of the State of West Virginia; The Kansas City Southern Railway Company, a corporation of the State of Missouri; The Lake Erie & Western Railroad Company, a corporation of the State of Ohio; The Lehigh & Hudson River Railway Company, a corporation of the States of New York and New Jersey; Lehigh & New England Railroad Company, a corporation of the States of Pennsylvania and New Jersey; Lehigh Valley Railroad Company, a corporation of the State of Pennsylvania; The Michigan Central Railroad Company, a corporation of the State of Michigan; Middletown & Unionville Railroad Company, a corporation of the State of New York; Mount Jewett, Kinzua & Ritterville Railroad Company, a corporation of the State of Pennsylvania; The New York, Chicago & St. Louis Railroad Company, a corporation of the State of New York, Pennsylvania, Ohio and Indiana; Northampton & Bath Railroad Company, a corporation of the State of Pennsylvania; Pere Marquette Railway Company, a corporation of the State of Michigan; Philadelphia & Reading Railway Company, a corporation of the State of Pennsylvania; The Pittsburgh & Lake Erie Railroad Company, a corporation of the State of Pennsylvania; The Pittsburgh & Shawmut Railroad Company, a corporation of the State of Pennsylvania. The Pittsburgh, Shawmut
4 & Northern Railroad Company and Henry S. Hastings Receiver, a corporation of the States of New York and Pennsylvania; Raritan River Railroad Company, a corporation of the State of New Jersey; Richmond Fredericksburg & Potomac Railroad Company, a corporation of the State of Virginia; Susquehanna & New York Railroad Company, a corporation of the State of Pennsylvania; The Toledo & Ohio Central Railway Company, a corporation of the State of Ohio; Union Railroad Company, a corporation

of the State of Pennsylvania; Wabash Railway Company, a corporation of the State of Indiana; Western Alleghany Railroad Company, a corporation of the State of Pennsylvania; The Wheeling & Lake Erie Railway Company, a corporation of the State of Ohio; The Zanesville & Western Railway Company, a corporation of the State of Ohio, bring this their petition against the United States of America, on behalf of themselves and such other corporations as have an interest herein and may by proper proceedings become parties hereto, and hereby sue to enjoin, set aside, annul and suspend an order of the Interstate Commerce Commission, a commission existing by virtue of the Act of Congress of February 4, 1887, entitled "An Act to Regulate Commerce" and the acts amendatory thereof and supplementary thereto, and thereupon your petitioners complain and say:

I.

At all the times hereinafter mentioned the petitioners were and they are now corporations under the laws of the States aforesaid and were and are common carriers engaged in the business of
5 operating railroads for the transportation of passengers and freight within and among the States of the United States subject to the provisions of the Interstate Commerce Act.

II.

The amount involved in this controversy exceeds the sum or value of five thousand dollars, exclusive of interest and costs, and this suit arises under the Constitution and laws of the United States in that the order of the Commission in question will deprive the petitioners of their property without due process of law and will take their property for public use without just compensation; in that in making said order the Commission acted without authority of law and beyond its powers and jurisdiction, and in that this suit is brought to enjoin, suspend and set aside an order of said Commission and is instituted under the authorization of the Interstate Commerce Act and of the Act of October 22, 1913, entitled "An Act making appropriations to supply urgent deficiencies in appropriations for the fiscal year nineteen hundred and thirteen and for other purposes" as well as under the general equity jurisdiction of this Court.

III.

The Central New England Railway Company is a corporation organized and existing under the laws of the State of New York, having its residence in the City of Poughkeepsie and in the Southern District and State of New York, and it was upon the petition of that corporation, together with certain other corporations, that the
6 Interstate Commerce Commission made the order relating to transportation which this suit is brought to suspend and set aside.

IV.

The complainants in the proceeding instituted as aforesaid in addition to the Central New England Railway Company were Bangor and Aroostook Railroad Company; Boston and Maine Railroad; Central Vermont Railway Company; Maine Central Railroad Company; The New York, New Haven and Hartford Railroad Company; Rutland Railroad Company and their subsidiaries and operated lines. Said railroad companies, which are referred to as the New England carriers, were and are engaged in the transportation of passengers and property principally within the New England States and all are subject to the Interstate Commerce Act.

V.

The complainants in said proceedings prior to the institution thereof, in connection with the petitioners and other railroads, had voluntarily established joint rates for the transportation of property between practically all points in the New England states and practically all points in that portion of the United States lying north of the Ohio River and east of the Mississippi River, as well as many points elsewhere in the United States. Certain of said joint rates were and are known as class rates and commodity rates dividing upon the class rate basis because they were and are governed
7 by classification of freight on file with the Interstate Commerce Commission and State commissions, and certain of said rates, such as those applicable to coal, milk, cream and high explosives, were and are known as commodity rates not subject to such classification because such classification did not and do not govern the application of said rates. The earnings under said class rates and said commodity rates dividing upon the class rate basis were and are divided among the several carriers in each case participating in the transportation in accordance with certain percentages or in accordance with certain percentages increased or diminished by arbitrary allowances in respect of particular services; said percentage divisions and arbitrary allowances had been long in force and were provided for by contracts between and among the carriers respectively participating in the operation of through routes and the division of joint rates and said contracts have not at any time been abrogated or revoked or attempted to be abrogated or revoked by any of the parties thereto.

VI.

Prior to the commencement of said proceeding, pursuant to the requirements of paragraph (2) of Section 15*a* of the Interstate Commerce Act, the Interstate Commerce Commission, in a proceeding known as Ex Parte 74, upon the joint application of complainants and petitioners and other carriers, designated as the Eastern Rate Group that part of the United States bounded as follows: "The

Atlantic seaboard from the Canadian border to Norfolk, Va.,
8 the main line of the Norfolk & Western Railway from Norfolk, Va., to Kenova, W. Va., the main line of the Chesapeake and Ohio Railway from Kenova, W. Va., to Cincinnati, Ohio, the Ohio River to Cairo, Ill., the Mississippi River to the mouth of the Illinois River, at or near Grafton, Ill., the Illinois River from Grafton, Ill., to Pekin, Ill., a line south and east of the Atchison, Topeka & Santa Fe Railway from Pekin, Ill., through Joliet and Streator, Ill., to Chicago, Ill., a line drawn from Chicago, Ill., to include the southern peninsula of Michigan and thence following the international boundary to the Atlantic seaboard." The Interstate Commerce Commission authorized uniform increases in freight rates and passenger fares within the aforesaid territory. Complainants claimed in the proceeding known as Ex Parte 74, that the ratio of expenses of all railways located in New England, including complainants and other railways, considered in combination, to the aggregate revenues derived from the then existing body of rates by all said New England railways, was greater than the corresponding ratio of all other railways in said Eastern Rate Group, considered also in combination and in the aggregate. And said complainants then suggested to the Commission that the Commission, in allowing increased rates, should provide for the diversion to said New England railways of a considerable portion of the increased earnings that would accrue to the other railways in the Eastern Rate Group by reason of any such increase. And complainants estimated the sum of money that they
claimed should be diverted, as aforesaid, at $25,000,000.00 per
9 annum. Complainants, also, represented to petitioners, and some of them, that such diversion might be made and proposed divers methods for its accomplishment by voluntary action on the part of the railways in interest. One of the methods proposed was an assessment of the amount of $25,000,000.00 upon all the railways in the Eastern Rate Group, other than the railways located in New England, such assessment to be in proportion to their respective gross freight revenues. Another method so proposed was an increase of three cents per ton to accrue to said New England railways upon all traffic interchanged between them and other carriers in the Eastern Rate Group. All the methods so proposed were designed to transfer to said New England railways from the earnings of petitioners and other railways in the Eastern Rate Group, other than in New England, substantially and approximately the sum of $25,000,000.00 per annum.

VII.

The aforesaid proposals of complainants were rejected and thereupon, the Commission having theretofore allowed a certain uniform increase in the freight rates applicable in said Eastern Rate Group, in Ex Parte 74, the complainants instituted said proceeding, by the complainant referred to in paragraph VII hereof, among other things that the railways in the Eastern Rate Group, other than themselves had benefitted to the extent of approximately $25,000,000.00 per annum by the inclusion of complainants in the Eastern Rate

Group and praying said Commission to award to complain-
10 ants increases in their divisions in respect of freight traffic interchanged with petitioners and other railways in amounts sufficient to aggregate substantially $25,000,000.00 per annum and praying, also, for an order allocating the sum that might be so diverted to complainants among the several complainants in just and proper proportions, alleging also in said complaint that the existing divisions were unjust, unreasonable and inequitable.

VIII.

The complainants commenced said proceeding on or about August 28, 1920, by filing with the Commission the complaint, above referred to, a copy of which is hereto annexed, marked Exhibit A, and made a part hereof. Said complaint, without specifying particular divisions, vaguely attacked the divisions accruing to the complainants out of the joint rates between points on their lines and points on the lines of the defendants and claimed, as already stated, that the defendants operating lines within the Eastern Rate Group had benefitted by the inclusion of the complainants and other corporations operating railroads in the New England States in said Eastern Rate Group. Subsequently, on or about September 9, 1920, the complainants were instructed by the Commission that their complaint was too general and would not justify it in instituting an investigation and would have to be made more specific as to the divisions in question and as to the rates affected. A copy of the communication from the Chief Examiner of the Commission to the com-
plainants is annexed hereto, marked Exhibit B, and made a
11 part hereof. Thereafter, on or about November 15, 1920, the complainants filed an amended complaint, a copy of which (with the exception of a schedule which will be offered in evidence) is annexed hereto, marked Exhibit C, and made a part hereof, praying among other things that the Commission prescribe the divisions thereafter to be received on traffic interchanged with the defendants and "that a further order be made determining a just and proper allocation between the complainants of such increased revenue as may be awarded to them."

IX.

The proceeding instituted as aforesaid came on to be heard before the Interstate Commerce Commission, and testimony was taken and arguments of counsel were made therein, and on or about July 6, 1921 the Commission made its report and rendered its opinion, a copy of which report and opinion, together with dissenting opinions, are annexed hereto as Exhibit D, and made a part hereof.

In said report and opinion the Commission said, among other things:

"The voluminous, but yet limited, character of the divisions submitted; the selection of the points between which the divisions apply; the dividing of the rates only at the gateways; the almost

total lack of the reasons which impelled the making of divisions via one gateway lower than via another; the doubt cast upon the reasonableness of the allowances and the arbitraries; the varying amounts of constructive mileage received by the complainants; the ex-
12 tent of the groups; the inconsistency of the division blocking; the failure of the Bangor & Aroostook to show any of its divisions; the fact that the Maine Central receives terminal arbitraries and arbitrary proportionals on much of its traffic; the failure to submit divisions on coal, high explosives, fluid milk and its edible products, fresh meat, in carloads, and other commodities; the absence of concrete final cost figures and indispensable facts, and generally, the submission of much unrelated data, have resulted in a record that affords no basis upon which we might predicate a valid prescription of divisions. We are authorized to prescribe only just, reasonable and equitable divisions 'to be received by the several carriers.' Full hearing and competent and relevant evidence are prerequisite. Any attempt to prescribe a blanket increase of divisions as here sought in the face of admissions and uncontradicted evidence that certain divisions are now just, reasonable and equitable to complainants would override the plain mandate of the law.

* * * * * * *

However, the record lays before us an existing condition of divisional arrangements which is the antithesis equality, uniformity, system, or order. A plan of transportation practices so fraught with incongruities and from which, as indicated by one of counsel, anything might be proved by a judicious selection of items, is indefensible. While the record affords no foundation upon which might rest a valid prescription by us of divisions, we cannot disregard the conditions portrayed. Our duty would not be fully per-
13 formed if we did not require a readjustment under which the conditions shall be relieved and demonstrably fair treatment accorded to all parties with respect to individual divisions. We are convinced, upon consideration of all the facts, that just, fair, and equitable divisions can not in many instances flow from the chaotic divisional arrangements to which we have adverted. We shall expect defendants and complainants to promptly submit to us proposed readjustments that will remove the inconsistencies portrayed of record and bring into conformity with the principles of law and equity expressed in the Act the divisional arrangements, individually and as a whole, between complainants and defendants. To this end designation by the parties of appropriate committees of qualified personnel is recommended, and we shall expect the appointment of such committees to work jointly in revision of the divisions and to report to us at the end of 90 days after the date hereof the results of their efforts, together with statements of divisions upon which agreement has been reached, as well as those upon which there may not be complete arrangement. Such statements may be accompanied by statements of fact and argument upon which the respective committees rely. Thereafter reports should be made to us at the end of

each period of 60 days until final and complete disposition of the issues shall have been accomplished. For these purposes the record will be held open."

In accordance with the requirement of said report committees representing the respective parties were appointed and began work and are still at work.

14

X.

While the work of said committees was progressing, and on or about October 26, 1921, said complainants filed a petition for reargument in said proceeding and without taking further testimony and without any change being made in the record on which said original report and opinion was rendered, said motion was allowed and reargument was had and, thereafter, as of the date of January 30, 1922, the Commission made and promulgated a second and further report and opinion in said proceeding, a copy of which together with the concurring and dissenting opinions, is annexed hereto, marked Exhibit E, and made a part hereof. And as of the date of January 30, 1922, the Commission, without any further testimony, or any change in said record, made an order in said proceeding, to take effect on March 1, 1922, which said order was served on the defendants on February 14, 1922, (and the defendants had no knowledge of said order until the date of service) and a copy of which is attached hereto, marked Exhibit F, and made a part hereof.

XI.

Said order finds, as shown by said report which is expressly made a part thereof, that "manifestly there is need in the case now before us for a thorough revision of the divisional arrangements upon a more logical and systematic basis. Manifestly, also, if a horizontal increase is made," (meaning a horizontal increase in the
15 divisions accruing to complainants) "before this revision takes place, the result may be to leave certain divisions too high and others too low * * *. Moreover, any comprehensive revision upon a logical and systematic basis can be consummated only after many months of labor and, very probably, only after further prolonged recourse to us." And the further finding in said report that, "we further find that the just, reasonable and equitable divisions to be received by the several other carriers participating in the aforesaid joint rates will for the future be the amounts remaining of the joint rates over and above the divisions so to be received by complainants," is formal only and is contradicted by the finding first above recited. And said order, in said report, finds and recommends also, as follows: "We enjoin upon complainants and defendants the necessity for proceeding as expeditiously as possible with the revision of divisions upon a logical and systematic basis which we recommended in our former report; * * * In making a study of such specific rates, every effort should be made to ascertain with such approximate accuracy as may prove possible the

respective costs of the service performed by the various participating carriers, including in such costs a fair share of the charges attributable to taxes and a reasonable return upon the property. The other elements mentioned in the statute, in addition to mileage, should likewise be considered." And said order is supported neither by a finding that existing divisions are or will become unjust, unreasonable, inequitable, preferential or unduly prejudicial as between the parties thereto nor by a finding that the divisions required by said order are or will become just, reasonable and equitable divisions.

16

XII.

The enforcement of said order would take from the petitioners and from other corporations to which it is directed large sums of money, and would transfer the same to the complainants in said proceeding, except the Bangor & Aroostook Railway Company; would substantially reduce the revenues and earnings of the petitioners from the transportation services which they render; would annul the contracts for divisions made by the parties, and would cause irreparable loss and damage to the petitioners for which they have no adequate remedy at law.

XIII.

Although the Commission did not, by said order, prescribe the just, reasonable, and equitable divisions of joint rates as required by law, but expressly left the determination of such divisions to be made as a result of the procedure prescribed by the Commission, as outlined in Paragraph XI, above, nevertheless the Commission undertook pending the revision of the divisions as prescribed by it, temporarily, by said order, to transfer large portions of the gross revenues earned upon interchange traffic to the complainants. Said order is in fact and in substance that pending the determination of just, reasonable and equitable divisions, upon an adequate record, there shall be transferred to the complainants a sum of money amounting, as nearly as the Commission could estimate, to $7,500,000.00 per annum. This is shown by a finding of said Commission, in said report and order, that "it further develops that

17 if the divisions now received by complainants on this merchandise traffic were increased by fifteen per cent, subject to the limitations hereinafter set forth the result, as nearly as can be estimated, would be an increase in revenue of not exceeding $7,500,000.00."

XIV.

On information and belief that no evidence was presented to said Commission in said proceeding showing or tending to show that the divisions existing between the respective parties to said proceeding were unjust, unreasonable, inequitable or unduly preferential or prejudicial to the complainants in said proceeding in such manner or

to such an extent that any horizontal or percentage increase of divisions in favor of said complainants would remove or remedy such unjust, unreasonable, inequitable, or unduly preferential or prejudicial conditions, and the order in the form made was arbitrary and without any evidence to support it.

XV.

On information and belief that the enforcement of said order would reduce the divisions of the several petitioners and other carriers to which said order is addressed in many joint rates concerning which there is no evidence before said Commission in said proceeding and concerning which there was no evidence showing or tending to show that said divisions were unjust, unreasonable, inequitable or unduly preferential or prejudicial as against the complainants in said proceeding and in favor of the defendants therein.

18

XVI.

On information and belief that the enforcement of said order would reduce the divisions of all the petitioners and other corporations to which said order is addressed, out of joint rates participated in by the complainants, and increase the divisions of complainants out of the same rates, although as to many of petitioners and said other corporations including, among others, the following named railroad companies there is no evidence in the record showing or tending to show what divisions are now received out of such joint rates: Pittsburg and Lake Erie Railway Company, Wheeling and Lake Erie Railway Company, Hocking Valley Railway Company and Toledo, St. Louis & Western Railway Company.

XVII.

Said order fails to prescribe the just, reasonable and equitable divisions of the joint rates with which it deals to be received by the several carriers affected thereby; it fails to provide for divisions between and among carriers participating in handling the traffic for the joint charge.

XVIII.

Said order deals with and attempts to regulate and control divisions of rates between groups of railroads, as such, and fails to take into consideration the amount, cost or value of the services rendered by the respective carriers participating in handling the traffic for the several joint charges.

19

XIX.

Said order attempts to deal with the whole body of divisions of class rates and of commodity rates divided upon the same bases as class rates (1) received by all complainants and (2) received by all

defendants in said proceeding and not with any particular divisions found to be unjust, unreasonable, inequitable or unduly preferential or prejudicial as among the respective carriers parties thereto.

XX.

Said order, taken in connection with the findings of fact and conclusions expressly made a part thereof, gives undue, unlawful and unwarranted consideration to the factor of "the amount of revenue required to pay their respective operating expenses, taxes and a fair return on their railway property held and used in the service of transportation and the importance to the public of the transportation service of said carriers," in favor of the complainants and excludes and gives insufficient consideration to the same factor as relating to the petitioners and other corporations, respectively, to which said order is directed and excludes and fails to give due consideration to whether particular participating carriers are originating, intermediate or delivering lines, and fails to give the due consideration required by the Interstate Commerce Act to the other factors expressed and implied in said Act.

20

XXI.

Said order is based upon the exclusive consideration by the Commission of the financial needs and requirements of one so-called group of carriers affected by it and not upon consideration of the needs and requirements of all the so-called groups affected by it nor of the railroads participating in the divisions affected by it; it construes and applies the Interstate Commerce Act as authorizing the taking from one so-called group of carriers and giving to another so-called group on account of the financial needs of the latter.

XXII.

Said order is indefinite, uncertain and ambiguous (1) in that it does not direct how the moneys which it undertakes to divert from the petitioners and other corporations to which it is addressed shall be divided among the complainants in said proceeding in cases where two or more of them are entitled to share in the division of the same joint rate affected by said order and (2) in that it does not fix the proportions in which the loss or diminution in revenue sustained by petitioners and other corporations to which it is addressed, shall be shared among them in cases where two or more of them are entitled to share in the divisions of the same joint rate.

21

XXIII.

Said order is not based upon any finding or determination by the Commission that the respective portions of the joint rates left to the several petitioners and corporations to which said order is directed said order would be just, equitable and reasonable.

XXIV.

Said order is arbitrary and without foundation in any evidence of record in that it adopts a different basis for increasing the divisions of complainants in cases where they now receive fifty per cent or less of the joint rate from that which it adopts where complainants now receive more than fifty per cent of said joint rate.

XXV.

Said order of the Interstate Commerce Commission (Exhibit F) is null and void and of no legal effect for the reasons set forth in paragraphs XI, XII, XIII, XIV, XV, XVI, XVII, XVIII, XIX, XX, XXI, XXII, XXIII and XXIV of this petition and for other reasons, some of which reasons already stated are here repeated and others are stated as follows:

(1) Said order was made effective less than thirty days from the date of service upon the parties affected thereby.

(2) Said order is not within any grant of power to said Commission for the reason that said Commission has not found that
22 the divisions superseded thereby are or will become unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the parties thereto.

(3) Said order is not based upon any evidence showing or tending to show that any legal defects in the divisions complained of would be remedied by the provisions of any such order.

(4) Said order is not within any grant of power to said Commission for the reason that there was no evidence in said proceeding showing or tending to show the facts necessary to support a valid order reducing the divisions of the petitioners herein.

(5) Said order fails to prescribe the just, reasonable and equitable divisions of the joint rates in question to be received by the several carriers parties thereto.

(6) Said order attempts to regulate divisions without regard to the amount, cost or value of the services rendered by the respective participating carriers.

(7) Said order attempts to deal with divisions as a whole and with groups of railroads.

(8) Said order is not within any grant of power to said Commission and is arbitrary for the reason that it was not made upon consideration of conditions or facts related to the subject in respect of which it was entered but was made for the purpose of rendering pecuniary aid to the complainants in said proceeding.

(9) Said order is ambiguous and uncertain.

23 (10) Said order, if enforced, would take the property of petitioners and other corporations, and certain of them, without due process of law and for public use without just compensation in violation of the Fifth Amendment to the Constitution of the United States.

(11) If the Interstate Commerce Act as amended must be construed as authorizing orders of the character of said order and issued under similar circumstances and conditions, said Act is unconstitutional and void for the reason that it would take property without due process of law and for public use without just compensation in violation of said Amendment.

(12) Said order attempts to take moneys from one so-called group of carriers and to transfer the amounts so taken to another so-called group of carriers upon grounds of public policy and if power so to take and to transfer exists at all, such power involves the exercise of exclusively legislative discretion and cannot be conferred upon an administrative agency.

In consideration whereof and for as much as your petitioners are remediless in the premises at and by the strict rules of the common law and to the end that they may obtain the relief to which they are entitled your petitioners now pray:

First. A permanent injunction decreeing that said order of the Interstate Commerce Commission be set aside, annulled, suspended, and its enforcement, operation and execution forever enjoined.

24 Second. An interlocutory injunction suspending and restraining the enforcement, operation and execution of said order of said Commission in whole and in part and setting the same aside.

Third. Such other and further relief as to justice and equity may appertain.

WALTER C. NOYES,
R. W. BARRETT,
JOHN C. BILLS,
GEORGE F. BROWNELL,
CLYDE BROWN,
N. S. BROWN,
A. H. ELDER,
W. S. JENNEY,
H. T. NEWCOMB,
CHARLES C. PAULDING,
Solicitors for Petitioners.

STATE OF NEW YORK,
County of New York, ss:

W. H. Williams, being duly sworn, says that he is Vice President of The Delaware and Hudson Company, one of the petitioners in the above entitled cause; that he has read the foregoing petition and

knows the contents thereof; that said petition is true of his own knowledge except as to those matters alleged on information and belief; and that as to those matters he believes it to be true.

—— ——.

Subscribed and sworn to before me this — day of March, 1922.

—— ——,

Notary Public.

25 EXHIBIT A.

Before the Interstate Commerce Commission.

I. C. C. Docket No. —.

BANGOR AND AROOSTOOK RAILROAD COMPANY et als.

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY et als.

Complaint.

The Complaint of the above named Complainants respectfully shows:

I. That they are corporations organized and existing by law with the following corporate names and respective principal places of business:

Bangor and Aroostook Railroad Company, Bangor, Maine.
Boston and Maine Railroad, Boston, Mass.
Bridgton and Saco River Railroad Company, Portland, Maine.
Central New England Railway Company, New Haven, Conn.
Central Vermont Railway Company, St. Albans, Vt.
Maine Central Railroad Company, Portland, Maine.
26 Montpelier and Wells River Railroad, Boston, Mass.
Rutland Railroad Company, Rutland, Vt.
Sandy River and Rangeley Lakes Railroad, Portland, Maine.
St. Johnsbury and Lake Champlain Railroad Company, Boston, Mass.
The New York, New Haven and Hartford Railroad Company, New Haven, Conn.

II. That their properties embrace certain lines of steamships, and substantially all of the lines of steam railroad in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut—except the lines of the Boston and Albany Railroad (New York Central Railroad Company, Lessee), Grand Trunk Railway Company of Canada and Canadian Pacific Railway Company—and extend also into the State of New York and the Dominion of Canada, in the operation of which properties they are common carriers engaged in the transportation of property wholly by railroad and partly by railroad and partly by water, locally on their own prop-

erties, jointly with each other and jointly with the Defendants from points in one state or territory of the United States or the District of Columbia to points in other states or territories of the United States or the District of Columbia, and from points in the United States through the Dominion of Canada to other points in the United States, and from or to points in the United States to or from points in foreign countries, including the Dominion of Canada, and as such common carriers they and the Defendants are subject to the provisions of the Interstate Commerce Act.

27 III. That the Defendants named in an Appendix hereto attached and herewith by reference made a part of this Complaint are common carriers by railroad or steamship, or both, and as such are engaged jointly with the Complainants in the transportation of property wholly by railroad and partly by railroad and partly by water between the points described in the preceding paragraph, and as such carriers are subject to the provisions of the Interstate Commerce Act.

IV. That the lines of the Complainants comprise over 90% of the steam railroad mileage in New England and the transportation service which they perform is of vital importance to that territory and to the country at large, due in part to the fact that the location of the territory makes it of strategic military importance, its industries have demonstrated a special adaptability for the production of munitions of war, the products of its soil and forests are consumed in large quantities in other sections, and that within New England is manufactured a great volume of commodities necessary to the welfare of the country and dependent upon the service of the Complainants for prompt and efficient distribution.

V. That the value of Complainants' properties held for and used in the service of transportation cannot at the present time be finally ascertained, but they believe and therefore respectfully represent that the results of the investi-ons by the Interstate Commerce Commission thus far obtained under section 19 (*a*) of the Interstate Commerce Act demonstrate that the aggregate value of their properties held for and used in the service of transportation greatly exceeds their
28 aggregate property investment accounts, said accounts as of October 31, 1919, aggregating not less than $838,274,769, including materials and supplies.

VI. That an annual return of 6% on the Complainants' aforesaid aggregate property investment accounts would amount to $50,296,485, which they have failed to earn during recent years in the following respects:

During the three years ending June 30, 1917, the Complainants earned in the aggregate an average annual net railway operating income of $35,175,077.

During the twenty-six months of Federal control the Complainants earned in the aggregate an average annual net railway operating income of $4,477,989.

During the six months immediately following Federal control the Complainants have suffered a net railway operating deficit estimated at $13,500,000.

VII. That, from a careful study of the best information available and on the basis of current costs and revenues, it is estimated that the operations of the Complainants for the year ending August 31, 1921, will yield an aggregate net railway operating income of less than $14,000,000—an amount approximately $36,000,000 less than a 6% return on their aggregate property investment accounts, and approximately $18,000,000 less than the amount necessary to meet their fixed charges.

29 VIII. That in the recent proceedings before the Commission in Ex Parte 74, the Complainants and such of the Defendants as are situated in that section of the country known to the Commission as Official Classification Territory were included in one rate group; as a result of the inclusion of Complainants' property investment accounts and revenue requirements in the same rate group with said Defendants, the amount of additional revenue necessary for the carriers in the group as a whole was increased to such an extent that the Defendants in said group will receive annually approximately $25,000,000 in revenue in excess of what they would have received if the Complainants had not been included in said group.

IX. That each of the Complainants is a party with one or more of the Defendants to a large number of joint rates and charges contained in tariffs filed with this Commission and published as required by law and applicable to the transportation of property wholly by railroad and partly by railroad and partly by water between the points described in Paragraph II hereof.

X. That said joint rates and charges are divided as between the Complainants, or some one or more of them, and Defendants or some one or more of them, parties thereto according to varying methods and bases which from time to time have been agreed upon in the light of conditions existing at the time of such agreements.

XI. That Complainants' lines are located almost entirely within the New England States—a district which has certain peculiar
30 geographical, industrial and economic conditions affecting rail transportation, which have been described by the Commission in the following language:

"At the outset it is well to note that the transportation problem of New England is in many respects distinctive. This grows in part out of geographical conditions and to a still greater extent out of industrial and economic conditions. The New England lines serve directly almost none of the territory outside of New England, and they must depend in considerable part, so far as freight traffic is concerned, upon the tonnage interchanged with their rail connections to the west and north and with steamship lines serving the New England ports. For these reasons, and because they participate in only a part

of the haul on through freight traffic into and out of New England, the New England lines have sometimes been referred to as 'mere terminal or switching railroads,' a statement that is misleading if strictly interpreted a reason for some of the difficulties encountered by these carriers.

"Another unusual feature of the New England situation is the character of the freight traffic. In no other section of the country does so large a percentage of the tonnage consist of high-grade manufactured products. Barring products of the forest and of the quarries, the outbound movement of raw materials from New England is almost negligible. New England's industrial life depends largely upon importing large quantities of iron, cotton, wool and other raw materials from the west and south and converting them into
31 finished products. Power used in New England for these manufacturing processes is mainly derived from coal originating outside of New England and transported substantial distances by rail or water."

Proposed Increases in New England, 49 I. C. C. 421, 423.

XII. That, due in part to the aforesaid peculiar geographic, industrial and economic conditions affecting rail transportation in the territory in which Complainants' properties are located, and particularly to the fact that the Complainants are to an unusual degree originating and terminating lines, the unit operating costs of the Complainants are necessarily higher than the unit operating costs of the Defendants, but these higher unit operating costs are not now properly reflected in the divisions of joint rates and charges received by Complainants from the transportation of the property above referred to.

XIII. That in view of the facts aforesaid, and particularly of the danger of Complainants failing to earn, by $18,000,000, sufficient net railway operating income to pay their fixed charges during the coming year, the Complainants, during the past four months, have urged upon the most directly interested Defendants their rights to a more favorable readjustment of divisions of joint through rates, but have been unable to secure any action on the part of said Defendants toward that end.

XIV. That the divisions received by the Complainants from all joint rates and charges applicable to the transportation of
32 property jointly by any of the Complainants and any of the Defendants have become and are unjust, unreasonable, inequitable, unduly prejudicial and otherwise in violation of paragraph 4 of section 1 and paragraph 6 of section 15 of the Interstate Commerce Act.

Wherefore the Complainants pray that the Defendants may be severally required to answer the charges herein; that after hearing and investigation an order be made prescribing the just, reasonable and equitable divisions to be received by the parties hereto from all joint

rates and charges, and in case of joint rates on traffic not moving entirely within the United States shall authorize the cancellation of such joint rates or such other action as shall assure just, reasonable and equitable compensation to the parties hereto for their services in connection with the transportation of such traffic; that the Commission shall determine what would have been the just, reasonable and equitable divisions of all joint rates and charges participated in by any of the parties hereto since the filing of this Complaint and require adjustment to be made in accordance therewith; that a further order be made determining a just and proper allocation between the Complainants of such increased revenues as may be awarded to them; and that such other and further order or orders be
33 made as the Commission may consider proper in the premises.

Dated at Boston, Massachusetts, August 27, 1920.

BANGOR AND AROOSTOOK RAILROAD COMPANY,
By H. J. HART, *Its Attorney.*

Bangor, Maine.

BOSTON & MAINE RAILROAD,
MONTPELIER AND WELLS RIVER RAILROAD,
THE ST. JOHNSBURY AND LAKE CHAMPLAIN RAILROAD COMPANY,
By W. A. COLE, *Their Attorney.*

Room 20, North Station, Boston, Mass.

CENTRAL VERMONT RAILWAY COMPANY,
By J. W. REDMOND, *Its Attorney.*

St. Albans, Vt.

MAINE CENTRAL RAILROAD COMPANY,
BRIDGTON AND SACO RIVER RAILROAD COMPANY,
SANDY RIVER AND RANGELEY LAKES RAILROAD,
By C. H. BLATCHFORD, *Their Attorney.*

232 St. John Street, Portland, Maine.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
CENTRAL NEW ENGLAND RAILWAY COMPANY,
By E. G. BUCKLAND,
J. C. SWEENEY,
W. L. BARNETT, *Their Attorneys.*

General Office Building, New Haven, Conn.

RUTLAND RAILROAD COMPANY,
By E. W. LAWRENCE *Its Attorney.*

Rutland, Vt.

34 APPENDIX A.

Carriers Defendant in Complaint Bangor & Aroostook Railroad Company et al. v. Aberdeen & Rockfish Railroad Company et als.

Aberdeen & Rockfish Railroad Company; Abilene & Southern Railway Company; The Akron, Canton & Youngstown Railway Company; Alabama & Mississippi Railroad Company; Alabama & Northwestern Railroad Company; Alabama & Vicksburg Railway Company; Alabama Central Railway; Alabama Central Railroad Company; Alabama, Florida & Gulf Railroad Company; Alabama Great Southern Railroad Company; The Alabama Northern Railway Company; Alabama, Tennessee & Northern Railroad Corporation; Albemarle Steam Navigation Company; Alcolu Railroad Company; The Algoma Central & Hudson Bay Railway Company; The Altamaha Navigation Company; Ann Arbor Railroad Company; Apalachicola Northern Railroad Company; Arcade & Attica Railroad Corporation; The Arizona & New Mexico Railway Company; Arizona Eastern Railroad Company; Arizona Southern Railroad Company; Ashland Coal & Iron Railway Company; Ashley & Dustin Steamer Line; The Atchison, Topeka & Santa Fe Railway Company; Atlanta & St. Andrews Bay Railway Company; Atlanta & West Point Railroad Company; Atlanta, Birmingham & Atlantic Railway Company; Atlantic & Carolina Railroad Company; Atlantic & Western Railroad Company; Atlantic & Yadkin Railway Company; Atlantic City Railroad Company; Atlantic Coast Line Railroad Company; Augusta Northern Railway;

Bachman Valley Railroad Company of Maryland; The Baltimore & Ohio Railroad Company; Baltimore & Ohio Chicago Terminal Railroad Company; Baltimore, Chesapeake & Atlantic Railway; Baltimore, Chesapeake & Atlantic River Lines; Bamberg, Ehrhardt & Waterboro Railway; Bath & Hammondsport Railroad Company; Bauxite & Northern Railway Company; The Beaumont, Sour Lake & Western Railway Company; The Belt Railway Company of Chicago; Bennetsville & Cheraw Railroad Company; Bessemer & Lake Erie Railroad Company; Big Fork & International Falls Railway Company; Big Sandy & Cumberland Railroad Company; Birmingham & Northwestern Railway Company; Birmingham & Southeastern Railway Company; Birmingham Southern Railroad Company; Black Mountain Railway; Bloomsburg & Sullivan Railroad Company; Blue Ridge Railway Company; Bonlee & Western Railway Company; Boston & Albany Railroad Company (New York Central Railroad Company, lessee); Bowdon Railway Company; Bovne City, Gaylord & Alpena Railroad Company; Brownstone & Middletown Railroad Company; Brownwood North & South Railway Company; Buffalo & Susquehanna Railroad Corporation; Buffalo, Rochester & Pittsburgh Railway Company; Bullfrog-Goldfield Railroad Company; Bush Terminal Railroad Company; Butte, Anaconda & Pacific Railway Company;

35

Callahan Line; Camas Prairie Railroad Company; Cambria & Indiana Railroad Company; Canadian National Railways; Canadian Pacific Car & Passenger Transfer Company; The Canadian Pacific Railway Company; Carolina & Northeastern Railroad Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; The Carolina & Yadkin River Railway Company; Carolina, Clinchfield & Ohio Railway; Carolina, Clinchfield & Ohio Railway of South Carolina; Catskill New York Steamboat Company, Limited; Central California Traction Company; Central Indiana Railway Company; Central New York Southern Railroad Corporation; Central of Georgia Railway Company; The Central Railroad Company of New Jersey; Central Railway Company of Arkansas; Central West Virginia & Southern Railroad Company; Charleston & Western Carolina Railway Company; Charlotte, Monroe & Columbia Railroad Company; Chatham, Wallaceburg & Lake Erie Railway Company; Chattahoochee Valley Railway Company; The Chesapeake & Ohio Railway Company; The Chesapeake & Ohio Railway Company of Indiana; Chesapeake Steamship Company; Chesapeake Western Railway; Chesterfield & Lancaster Railroad Company; Chestnut Ridge Railway Company; The Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company and W. J. Jackson, receiver; Chicago & Erie Railroad Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago & North Western Railway Company; Chicago & West Ridge Railroad; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Kalamazoo & Saginaw Railway Company; Chicago, Memphis & Gulf Railroad Company; Chicago, Milwaukee &
36 Gary Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Peoria & St. Louis Railroad Company and Bluford Wilson and William Cotter, receivers; Chicago, Racine & Milwaukee Line; The Chicago, Rock Island & Gulf Railway Company; The Chicago, Rock Island & Pacific Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Chicago Short Line Railway Company; Chicago, Terre Haute & Southeastern Railway Company; Cincinnati, Burnside & Cumberland River Railway Company; Cincinnati, Georgetown & Portsmouth Railroad; The Cincinnati, Indianapolis & Western Railroad Company; The Cincinnati, Lebanon & Northern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Cleveland & Buffalo Transit Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Cliffside Railroad Company; Clinton & Oklahoma Western Railway Company; Clinton, Davenport & Muscatine Railway Company; Coal & Coke Railway Company; Coeur d'Alene & Pend d'Oreille Railway Company; Coeur d'Alene & St. Joe Transportation Company; The Colorado & Southeastern Railroad Company; The Colorado & Southern Railway Company; Columbia, Newberry & Laurens Railroad Company; Cooperstown & Charlotte Valley Railroad Com-

pany; Copper Range Railroad Company; Cornwall Railroad Company; Coudersport & Port Allegany Railroad Company; Cumberland & Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; Cumberland Valley & Martinsburg Railroad Company;

Dansville & Mount Morris Railroad Company and A. S. Murray, receiver; Danville & Western Railway Company; The Dayton & Union Railroad Company; The Dayton, Toledo & Chicago Railway Company; The Delaware & Hudson Company; Delaware & Northern Railroad Company; The Delaware, Lackawanna & Western Railroad Company; the Denison & Pacific Suburban Railway Company; The Denver & Rio Grande Railroad Company and A. R. Baldwin, receiver; Detroit & Cleveland Navigation Company; The Detroit & Huron Railway Company; Detroit & Mackinac Railway Company; Detroit & Toledo Shore Line Railroad Company; Detroit, Bay City & Western Railroad Company; Detroit, Toledo & Ironton Railroad Company; Doniphan, Kensett & Searcy Railway; Dover & South Bound Railroad Company; The Due West Railway Company; Duluth & Northeastern Railroad Company; Duluth, Missabe & Northern Railway Company; The Du-
37 luth, South Shore & Atlantic Railway Company; Duluth, Winnipeg & Pacific Railway Company; Durham & Southern Railway Company;

Eagles Mere Railroad Company and Edward Bailey, receiver; East Berlin Railway Company; East Carolina Railway; Eastern Carolina Transportation Company; Eastern Texas Railroad Company; The East Jordan & Southern Railroad Company; The East St. Louis Connecting Railway Company; East Tennessee & Western North Carolina Railroad Company; Edgemoor & Manetta Railway Company; Elberton & Eastern Railroad Company; El Dorado & Wesson Railway Company; Elgin, Joliet & Eastern Railway Company; Elkin & Alleghany Railway Company; El Paso & Southwestern Company; Emmitsburg Railroad Company; Erie Railroad Company; Erie & Michigan Railway & Navigation Company; Escanaba & Lake Superior Railroad Company; Essex Terminal Railway; Esquimalt & Nanaimo Railway Company; Evansville & Indianapolis Railroad Company and W. P. Kappes, receiver;

Fairchild & Northeastern Railway; The Fairport, Painesville & Eastern Railroad Company; Felicity & Bethel Railroad Company; Fernwood, Columbia & Gulf Railroad Company; Flint River & Northeastern Railroad Company; Florida East Coast Railway Company; Fonda, Johnstown & Gloversville Railroad Company; Fordyce & Princeton Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith & Western Railroad Company and A. L. Mills, receiver; Fort Wayne, Cincinnati & Louisville Railroad Company; The Fort Worth & Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Frankfort & Cincinnati Railway Company; Franklin & Pennsylvania Railroad Company; Fredericton & Grand Lake Coal & Railway Company; Furen Boat Line;

Gainesville & Northwestern Railroad Company; Gainesville Midland Railway; Galesburg & Western Railroad and T. M. Cox, receiver; The Galveston, Harrisburg & San Antonio Railway Company; Garyville Northern Railroad Company; Genessee & Wyoming Railroad Company; Georgia & Florida Railway and W. R. Sullivan, John F. Lewis, and L. M. Williams, receivers; The Georgia, Florida & Alabama Railway Company; Georgia Northern Railway Company; Georgia Railroad; Georgia Southern & Florida Railway Company; Georgia Southwestern & Gulf Railroad Company; The Gettysburg & Harrisburg Railway Company; Glenmort &
38 Western Railway; Goodrich Transit Company; Grand Rapids & Indiana Railway Company; The Grand River Railway Company; Grand Trunk Pacific Railway Company; Grand Trunk Railway Company of Canada; Grand Trunk Western Railway Company; Great Lakes Transit Corporation; The Great Northern Railway Company; The Great Western Railway Company; Green Bay & Western Railroad Company; Greene County Railroad Company; Gulf & Ship Island Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Gulf, Florida & Alabama Railway Company and John T. Steele, receiver; Gulf, Mobile & Northern Railroad Company; Gulf, Texas & Western Railway Company;

The Hagerstown & Frederick Railway Company; Hampton & Branchville Railroad & Lumber Company; The Hanover Railway Company; Harriman & Northeastern Railroad Company; Hartford Eastern Railway Company; Hartwell Railway Company; Hawkinsville & Florida Southern Railway Company; Helena, Parkin & Northern Railway Company and H. M. Gregory, receiver; High Point, Randleman, Asheboro & Southern Railroad Company; Hill Steamboat Line; Hoboken Manufacturers' Railroad Company; The Hocking Valley Railway Company; Houston & Brazos Valley Railway Company and George C. Morris, receiver; Houston & Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East & West Texas Railway Company; The Huntingdon & Broad Top Mountain Railroad & Coal Company;

Iberia & Vermilion Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway; Illinois Terminal Railroad Company; Illinois Traction Company; Indian Creek Valley Railway Company; Indiana Harbor Belt Railroad Company; Inland Empire Railroad; International & Great Northern Railway Company and James A. Baker, receiver; Interstate Car and Transfer Company; The Interstate Railroad Company; Ironton Railroad Company; The Isabell Line;

Kalamazoo, Lake Shore & Chicago Railway Company; The Kanawha & Michigan Railway Company; Kanawha & West Virginia Railroad Company; Kane & Elk Railroad Company; Kansas & Sidell Railroad Company; Kansas City & Memphis Railway Company and J. E. Felker and R. C. Bright, receivers; The Kansas City, Clinton & Springfield Railroad Company; Kansas City, Kaw Valley & Western Railway; The Kansas City, Mexico & Orient Rail-

road Company and William T. Kemper, receiver; Kansas City, Mexico & Orient Railway Company of Texas; Kansas City Northwestern Railroad and L. S. Cass, receiver; The Kansas City
39 Southern Railway Company; Kansas, Oklahoma & Gulf Railway; Kentucky & Tennessee Railway; Kentwood, Greensburg & Southwestern Railroad Company; Kewaunee, Green Bay & Western Railroad Company; The Kinston-Carolina Railroad Company; Knoxville, Sevierville & Eastern Railway Company; Kosciusko & Southeastern Railroad Company;

Lackawanna & Wyoming Valley Railroad Company; La Crosse & Southeastern Railway Company; Lake Charles & Northern Railroad Company; Lake Erie & Northern Railway; The Lake Erie & Western Railroad Company; Lake Erie, Franklin & Clarion Railroad Company; Lake Superior & Ishpeming Railway Company; Lancaster & Chester Railway Company; Laona & Northern Railway Company; Laurel Fork Railway Company; Laurenceville Branch Railroad; Lawndale Railway & Industrial Company; Laurinburg & Southern Railroad Company; The Lehigh & Hudson River Railway Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; Lehigh Valley Transportation Company; Liberty-White Railroad; Linville River Railway Company; Litchfield & Madison Railway Company; Little Kanawha Railroad Company; London & Port Stanley Railway; The Long Island Railroad Company; The Lorain & West Virginia Railway Company; The Lorain, Ashland & Southern Railroad Company; Los Angeles & Salt Lake Railroad Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Louisiana Southern Railway Company; Louisiana Western Railroad Company; Louisville & Nashville Railroad Company; Louisville & Wadley Railroad Company; Louisville Bridge & Terminal Railroad; Louisville, Henderson & St. Louis Railway Company; Louisville, New Albany & Corydon Railroad Company; The Lowville & Beaver River Railroad Company;

Macon & Birmingham Railway Company and H. W. Miller, receiver; Macon, Dublin & Savannah Railroad Company; Manchester & Oneida Railway Company; Manistee & Northeastern Railroad and The Michigan Trust Company, receiver; Manistique & Lake Superior Railroad Company; Marianna & Blountstown Railroad Company; Marinette, Tomahawk & Western Railroad Company; Marion Railway Corporation; Marion & Southern Railroad; Marquette & Bessemer Dock & Navigation Company; Maryland & Pennsylvania Railroad Company; Maryland, Delaware & Virginia Railway Company; The Maryland Electric Railways Company; Maxton, Alma & Southbound Railroad Company of
40 Alma, N. C.; Memphis, Dallas & Gulf Railroad Company; Merchants & Planters Steamboat Company; Meridian & Memphis Railway Company; The Michigan Central Railroad Company; Michigan Railroad Company; Michigan Railway Company; Middletown & Unionville Railroad Company; Midland Continental Railroad; Midland Railway Company; Midland Railway Company of Manitoba; Midland Valley Railroad Com-

pany; Milstead Railroad Company; Mineral Point & Northern Railway Company; Mineral Range Railroad Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, Northfield & Southern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Minnesota & International Railway Company; Mississippi Central Railroad Company; Missouri & Illinois Bridge & Belt Railroad Company; Missouri & North Arkansas Railroad Company and C. A. Phelan, receiver; Missouri, Kansas & Texas Railway Company and C. E. Schaff, receiver; Missouri, Oklahoma & Gulf Railway Company of Texas; Missouri Pacific Railroad Company; Mobile & Ohio Railroad Company; The Monongahela Railway Company; Montour Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Morgantown & Kingwood Railroad Company; Morristown & Erie Railroad Company; Mount Jewett, Kinzua & Riterville Railroad Company; Munising, Marquette & Southeastern Railway Company; Muscatine, Burlington & Southern Railroad Company;

Napierville Junction Railway Company; Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company; Natchez Columbia & Mobile Railroad Company; Nevada-California-Oregon Railway; The Nevada Northern Railway Company; New Holland Boat Line; New Jersey & New York Railroad Company; New Jersey, Indiana & Illinois Railroad Company; New Mexico Central Railway Company; New Orleans & Northeastern Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany & Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; The New York & Long Branch Railroad Company; New York & Pennsylvania Railway Company; The New York Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; New York, Ontario & Western Railway Company; New York, Philadelphia & Norfolk Railroad Company; New York, Susquehanna & Western Railroad Company; Norfolk & Washington Steamboat Company; Norfolk & Western Railway Company; Norfolk Southern Railroad Company; Northampton & Bath Railroad Com-
41 pany; Northern Alabama Railway Company; Northern Navigation Company, Limited; The Northern Ohio Railway Company; Northern Pacific Railway Company; North River Line; Northwestern Pacific Railroad Company; Northwestern Railroad of South Carolina; Norton & Northern Railway; Norwood & St. Lawrence Railroad Company;

Ocilla Southern Railroad and M. W. Garbutt, J. A. J. Henderson, and J. F. Gray, receivers; Oconee Steamboat Company; Ohio Electric Railway Company; The Oklahoma, New Mexico & Pacific Railway Company; Ontario Car Ferry Company, Limited; The Orange & Northwestern Railroad Company; Orangeburg Railway and C. E. Denniston, Receiver; Oregon Electric Railway Company; Oregon Short Line Railroad Company; Oregon Trunk Railway Company; Oregon-Washington Railroad & Navigation Company;

Pacific Coast Railroad Company; Pacific Electric Railway Company; Pacific Great Eastern Railway Company; Pacific Northwest Traction Company; Pacific Steamship Company; Panhandle & Santa Fe Railway Company; Paris & Great Northern Railroad Company; Paris & Mount Pleasant Railroad Company and R. W. Wortham, receiver; The Peninsular & Occidental Steamship Company; The Pennsylvania Railroad Company; The Pennsylvania Railroad Company, Western Lines; Pennsylvania-Ontario Transportation Company; Peoria & Pekin Union Railway Company; Peoria Railway Terminal Company; Pere Marquette Line Steamers; Pere Marquette Railway Company; Perquimans River Line; Petaluma & Santa Rosa Railroad Company; Philadelphia & Reading Railway Company; Phillips & Ashmore Boat Line; The Pickens Railroad Company; Piedmont & Northern Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburg & Shawmut Railroad Company; Pittsburg & Susquehanna Railroad Company; The Pittsburgh & West Virginia Railway Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Pittsburgh, Lisbon & Western Railroad Company; The Pittsburg, Shawmut & Northern Railroad Company and F. S. Smith, receiver; Pontiac, Oxford & Northern Railroad Company; Port Chester Transportation Company; Portland Railway, Light & Power Company; Port Townsend & Puget Sound Railway; Prattsburg Railway Corporation; Prescott & Northwestern Railroad Company; Preston Railroad Company;
42 Puget Sound Navigation Company; Pullman Railroad Company;

Quanah, Acme & Pacific Railway Company; Quebec Central Railway; The Quebec, Montreal & Southern Railroad Company; Quincy, Omaha & Kansas City Railroad Company;

Rahway Valley Company; Raleigh & Charleston Railroad Company; Randolph & Cumberland Railway Company; The Rapid Railway Company; Rapid Railroad Company; Raritan River Railroad Company; Red River & Gulf Railroad Company; Reynoldsville & Falls Creek Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Rio Grande & Eagle Pass Railway Company; Rio Grande, El Paso & Santa Fe Railroad Company; Roanoke River Steamboat Company; Rockingham Railroad Company; Rock Island Southern Railway Company and T. H. Beacom and W. T. Abbott, receivers; Rome & Northern Railroad Company and D. B. Carson, receiver; Rocoe, Snyder & Pacific Railway Company; Rural Valley Railroad;

The St. Joseph & Grand Island Railway Company; St. Louis & Hannibal Railroad Company; The St. Louis, Brownsville & Mexico Railway Company; St. Louis, El Reno & Western Railway Company and Arthur L. Mills, receiver; St. Louis, Kennett & Southeastern Railroad Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis-San Francisco Railway Company; St. Louis-San Francisco & Texas Railway Company;

St. Louis Southwestern Railway Company; St. Louis Transfer Railway Company; Sacramento Northern Railroad; The Salina Northern Railroad Company and H. C. Brent and P. W. Goebel, receivers; Salt Lake & Utah Railroad Company; San Antonio & Aransas Pass Railway Company; San Antonio, Uvalde & Gulf Railroad and A. R. Ponder, receiver; Sandersville Railroad Company; San Diego & Arizona Railway Company; Sand Springs Railway Company; San Francisco-Sacramento Railroad Company; Santa Maria Valley Railroad Company; Savannah & Atlanta Railway; Savannah & Statesboro Railway Company; Seaboard Air Line Railway Company; The Sharpsville Railroad Company and G. M. McIlvain, receiver; Shearwood Railway Company; Sheffield and Tionesta Railway Company; Shippers Navigation Company; Skagit River Navigation & Trading Company; Smithonia & Dunlap Railroad Company; South Brooklyn Railway Company; Southern Pacific Company; Southern Railway Company; Southern Railway Company in Mississippi; South
43 Georgia Railway Company; Spokane & British Columbia Railway; Spokane & Eastern Railway & Power Company; Spokane International Railway Company; Spokane, Portland & Seattle Railway Company; The Staten Island Rapid Transit Railway Company; Stewartstown Railroad Company; Stone Harbor Terminal Railroad Company; Sumter & Choctaw Railway Company; Sylvania Central Railway Company;

Tallulah Falls Railway Company; Temiskaming & Northern Ontario Railway; Tennessee & North Carolina Railroad Company and James G. Campbell, receiver; Tennessee, Alabama & Georgia Railroad Company; Tennessee Central Railroad Company and H. W. Stanley and W. H. McAllister, receivers; Tennessee, Kentucky & Northern Railroad Company; Tennessee Railway Company and J. N. Baker, receiver; Terminal Railroad Association of St. Louis; Texarkana & Fort Smith Railway Company; Texas & New Orleans Railroad Company; The Texas & Pacific Railway Company and J. L. Lancaster and Charles L. Wallace, receivers; Texas City Terminal Company; The Texas Mexican Railway Company; Texas Midland Railroad; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Texas Southeastern Railroad Company; Texas State Railroad; Thornton & Alexandria Railway Company; The Thousand Islands Railway Company; Tide water Southern Railway; Tionesta Valley Railway Company; The Toledo & Ohio Central Railway Company; Toledo, Peoria & Western Railway Company and C. N. Armstrong, receiver; Toledo, St. Louis & Western Railroad Company and W. L. Ross, receiver; Tonopah & Goldfield Railroad; Tonopah & Tidewater Railroad Company; The Toronto, Hamilton & Buffalo Railway Company; The Trinity & Brazos Valley Railway Company and John A. Hulen, receiver; The Tuckerton Railroad Company; Tucson, Cornelia & Gila Bend Railroad Company; Tug River & Kentucky Railroad Company; Tuskegee Railroad Company;

The Ulster & Delaware Railroad Company; Unadilla Valley Railway Company; Union & Glenn Springs Railroad Company; Union

Pacific Railroad Company; Union Point & White Plains Railroad Company; Union Railway Company (Memphis); Union Railroad Company; United Railways Company; Utah-Idaho Central Railroad Company;

Valdosta, Moultrie & Western Railway Company; The Valley Railroad Company (of New York); Valley Railroad Company (of West Line, Pa.); The Valley Railroad Company of Virginia; Vancouver, Victoria & Eastern Railway & Navigation Company; Vicksburg, Shreveport & Pacific Railway Company; Virginia &
44 Carolina Southern Railroad Company; The Virginian Railway Company; Visalia Electric Railroad Company;

The Wabash, Chester & Western Railroad Company and J. Fred. Gilster, receiver; Wabash Railway Company; Wadley Southern Railway; Walla Walla Valley Railway Company; The Wanchese Line; Ware Shoals Railroad; Warren & Ouachita Valley Railroad Company; Warren, Johnsville & Saline River Railroad Company; Washington & Lincolnton Railroad Company; Washington & Old Dominion Railway; Washington & Vandemer Railroad Company; Washington, Baltimore & Annapolis Electric Railroad Company; Washington, Idaho & Montana Railway Company; Washington Run Railroad Company; Waterloo, Cedar Falls & Northern Railway Company; Watertown & Sioux Falls Railway Company; Waupaca-Green Bay Railroad Company; Waycross & Southern Railroad Company; Waycross & Western Railroad Company; Wellington & Powellsville Railroad Company; Western & Atlantic Railroad Company; Western Allegheny Railroad Company; Western Maryland Railway Company; The Western Pacific Railroad Company; The Western Railway of Alabama; Westfield Railroad Company; West Jersey & Seashore Railroad Company; West Shore Railroad Company (New York Central Railroad Company, lessee); West Side Belt Railroad Company; West Virginia Northern Railroad Company; Wharton & Northern Railroad Company; The Wheeling & Lake Erie Railway Company; White Sulphur Springs & Yellowstone Park Railway Company; The Wichita Falls & Northwestern Railway and C. E. Schaff, receiver; The Wichita Valley Railway Company; Wiggins Ferry Company; Wildwood & Delaware Bay Short Line Railroad Company; Wilkes-Barre & Eastern Railroad Company; Wilkes-Barre & Hazelton Railway Company; Willamette Valley Southern Railway Company; Williamson & Pond Creek Railroad Company; Williamsport & North Branch Railroad Company and Edward Bailey, receiver; The Williams Valley Railroad Company; Wilmington, Brunswick & Southern Railroad Company; Windsor, Essex & Lake Shore Rapid Railway; The Winfield Railroad Company; Winston-Salem Southbound Railway Company; Wisconsin & Michigan Railroad Company; Wisconsin & Northern Railroad Company; Wrightsville & Tennille Railroad Company;

Yadkin Railway Company; Yakima Valley Transportation Company; The Yazoo & Mississippi Valley Railroad Company; The Youngstown & Ohio River Railroad Company; and the Zanesville & Western Railway Company.

45 EXHIBIT B.

Docket No. 11756.

September 9, 1920.

Mr. E. G. Buckland, Vice President
New York, New Haven & Hartford Railroad,
New Haven, Conn.

DEAR SIR:

You recently called in connection with a complaint filed on behalf of the New England railroads against practically all of the other roads in the United States, requesting that the Commission increase the divisions now allowed out of joint rates to the New England carriers and authority to cancel joint rates on traffic not moving entirely within the United States, all based upon the contention that the amount of additional revenue to accrue to the New England roads from the Commission's findings in Ex Parte 74 is insufficient for their needs.

I am directed by the Commission to say to you and others directly interested in this application that it is not in form which would justify the Commission instituting an investigation as requested. The complaint is too general. The Commission feels that the complaining roads should be much more specific in their complaints, both as to the rates of which they desire the divisions changed and as to the carriers participating therein. It is not necessary, of course, to specify each and every rate, but they can be specified with sufficient accuracy so that they can be grouped in preparation for hearings, and in hearing it will be possible for all interested to know what carriers are and what carriers are not interested in
46 certain allegations.

If the complaint is reconstructed along these lines and again presented to the Commission it will be given as prompt consideration as circumstances will permit.

Yours very truly,

____ ____,
Chief Examiner.

47

EXHIBIT C.

Before the Interstate Commerce Commission.

I. C. C. Docket No. 11756.

BANGOR AND AROOSTOOK RAILROAD COMPANY et als.

v.

ABERDEEN AND ROCKFISH RAILROAD COMPANY et als.

Amended Complaint.

Now come the Complainants and in order to make their Complaint more specific, amend the same so that it shall read as follows: The Complaint of the above named Complainants respectfully shows:

I. That they are corporations organized and existing by law with the following corporate names and respective principal places of business:

Bangor and Aroostook Railroad Company, Bangor, Maine.
Boston and Maine Railroad, Boston, Mass.
Bridgton and Saco River Railroad Company, Portland, Maine.
Central New England Railway Company, New Haven, Conn.
Central Vermont Railway Company, St. Albans, Vt.
48 Maine Central Railroad Company, Portland, Maine.
Montpelier and Wells River Railroad, Boston, Mass.
Rutland Railroad Company, Rutland, Vt.
Sandy River and Rangeley Lakes Railroad, Portland, Maine.
St. Johnsbury and Lake Champlain Railroad Company, Boston, Mass.
The New York, New Haven and Hartford Railroad Company, New Haven, Conn.

II. That their properties embrace certain lines of steamships, and substantially all of the lines of steam railroad in the States of Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut—except the lines of the Boston and Albany Railroad (New York Central Railroad Company, Lessee), Grand Trunk Railway Company of Canada and Canadian Pacific Railway Company—and extend also into the State of New York and the Dominion of Canada, in the operation of which properties they are common carriers engaged in the transportation of property wholly by railroad and partly by railroad and partly by water, locally on their own properties, jointly with each other and jointly with the Defendants from points in one state or territory of the United States or the District of Columbia to points in other states or territories of the United States or the District of Columbia, and from points in the United States through the Dominion of Canada to other points in the United

States, and from or to points in the United States to or from points in foreign countries, including the Dominion of Canada, and as such common carriers they and the Defendants are subject
49 to the provisions of the Interstate Commerce Act.

III. That the Defendants named in Appendix A hereto attached and herewith by reference made a part of this Complaint are common carriers by railroad or steamships, or both, and as such are engaged jointly with the Complainants in the transportation of property wholly by railroad and partly by railroad and partly by water between the points described in the preceding paragraph, and as such carriers are subject to the provisions of the Interstate Commerce Act.

IV. That the lines of the Complainants comprise over 90% of the steam railroad mileage in New England and the transportation service which they perform is of vital importance to that territory and to the country at large, due in part to the fact that the location of the territory makes it of strategic military importance, its industries have demonstrated a special adaptability for the production of munitions of war, the products of its soil and forests are consumed in large quantities in other sections, and that within New England is manufactured a great volume of commodities necessary to the welfare of the country and dependent upon the service of the Complainants for prompt and efficient distribution.

V. That the value of Complainants' properties held for and used in the service of transportation cannot at the present time be finally ascertained, but they believe and therefore respectfully represent that the results of the investigations by the Interstate Commerce Commission thus far obtained under section 19 (*a*) of the Inter-
50 state Commerce Act demonstrate that the aggregate value of their properties held for and used in the service of transportation greatly exceeds their aggregate property investments accounts, said accounts as of October 31, 1919, aggregating not less than $838,274,769, including materials and supplies.

VI. That an annual return of 6% on the Complainants' aforesaid aggregate property investment accounts would amount to $50,296,485, which they have failed to earn during recent years in the following respects:

During the three years ending June 30, 1917, the Complainants earned in the aggregate an average annual net railway operating income of $35,175,077.

During the twenty-six months of Federal control the Complainants earned in the aggregate an average annual net railway operating income of $1,477,989.

During the six months immediately following Federal control the Complainants have suffered a net railway operating deficit estimated at $13,500,000.

VII. That, from a careful study of the best information available and on the basis of current costs and revenues, it is estimated that

the operations of the Complainants for the year ending August 31, 1921, will yield an aggregate net railway operating income of substantially less than $14,000,000—an amount approximately $36,000,000 less than a 6% return on their aggregate property investment accounts, and approximately $18,000,000 less than the amount necessary to meet their fixed charges.

51 VIII. That in the recent proceedings before the Commission in Ex Parte 74, the Complainants and such of the Defendants as are situated in that section of the country known to the Commission as Official Classification Territory were included in one rate group; as a result of the inclusion of Complainants' property investment accounts and revenue requirements in the same rate group with said Defendants, the amount of additional revenue necessary for the carriers in the group as a whole was increased to such an extent that the Defendants in said group will receive annually approximately $25,000,000 in revenue in excess of what they would have received if the Complainants had not been included in said group.

IX. That each of the Complainants is a party with one or more of the Defendants to a large number of joint rates and charges contained in tariffs filed with this Commission and published as required by law and applicable to the transportation of property wholly by railroad and partly by railroad and partly by water between the points described in Paragraph II hereof.

X. That said joint rates and charges are divided as between the Complainants, or some one or more of them, and Defendants, or some one or more of them, parties thereto according to varying methods and bases which from time to time have been agreed upon in the light of conditions existing at the time of such agreements.

X(*a*). That attached hereto is a schedule marked Appendix B in which are shown the through fifth-class rates and the revenue accruing therefrom to the Complainants and Defendants, respect-
52 ively, on traffic moving between representative points in New England and representative points in other sections; that while said rates and divisions are shown only with respect to fifth-class traffic and the west-bound movement thereof, the bases of the divisions with respect to other classes and to east bound traffic are relatively the same; that the rates and routes shown in said Appendix B are merely illustrative, and the non-inclusion therein of routes and rates eastbound, by rail-and-lake routes, or by so-called differential routes, is not intended to exclude the propriety of the divisions of said rates from the issues herein; that the relative divisions shown in said Appendix B are to a large degree typical of those accruing from rates on commodities moving in large volume between the same general localities in many cases under commodity rates, the divisions of which are also in issue in this proceeding, among said commodities being the following:

Westbound.

Newsprint paper,	Talc,
Book paper,	Marble,
Wood pulp,	Scales,
Potatoes,	Machinery of all kinds,
Lumber,	Hardware,
Canned fish,	Brass goods,
Canned fruits,	Twine and rope,
Canned vegetables,	Wire,
Boots and shoes,	Ammunition,
Textiles,	Fire arms,
Rough granite,	Wire fencing,
Finished granite,	Rubber boots and shoes.

53

Eastbound.

Coal (anthracite and bituminous),	Cotton,
Grain,	Cement,
Feed,	Pig iron,
Flour,	Iron and steel articles,
Dressed beef,	Furniture,
Packing-house products,	Automobiles,
Leather,	Sewer pipe,
Wool,	Petroleum products,
Agricultural implements,	Hay,
Wood pulp board,	Soda ash,
Straw board,	Wood pulp,
Butter,	Citrus fruits,
Eggs,	Deciduous fruits,
Dressed poultry,	Pressed fruits,
Glass,	Canned fruits,
Paving brick,	Canned fish,
	Nuts.

That the commodity rates on some or all of the above commodities apply to and from points on the lines of all the Complainants from and to points on the lines of the Defendants and the divisions thereof are in issue herein.

XI. That Complainants' lines are located almost entirely with- the New England States—a district which has certain peculiar geographical, industrial and economic conditions affecting rail transportation, which have been described by the Commission in the following language:

"At the outset it is well to note that the transportation problem of New England is in many respects distinctive. This grows in part out of geographic conditions and to a still greater extent out of industrial and economic conditions. The New England lines serve
54 directly almost none of the territory outside of New England, and they must depend in considerable part, so far as freight

traffic is concerned, upon the tonnage interchanged with their rail connections to the west and north and with steamship lines serving the New England ports. For these reasons, and because they participate in only a part of the haul on through freight traffic into and out of New England, the New England lines have sometimes been referred to as 'mere terminal or switching railroads,' a statement that is misleading if strictly interpreted, but not wholly without value as suggesting a reason for some of the difficulties encountered by these carriers.

"Another unusual feature of the New England situation is the character of the freight traffic. In no other section of the country does so large a percentage of the tonnage consist of high-grade manufactured products. Barring products of the forest and of the quarries, the outbound movement of raw materials from New England is almost negligible. New England's industrial life depends largely upon importing large quantities of iron, cotton, wool, and other raw materials from the west and south and converting them into finished products. Power used in New England for these manufacturing processes is mainly derived from coal originating outside of New England and transported substantial distances by rail or water."

Proposed Increases in New England, 49 I. C. C. 421, 423.

55 XII. That, due in part to the aforesaid peculiar geographic, industrial and economic conditions affecting rail transportation in the territory in which Complainants' properties are located, and particularly to the fact that the Complainants are to an unusual degree originating and terminating lines, the unit operating costs of the Complainants are necessarily higher than the unit operating costs of the Defendants, but these higher unit operating costs are not now properly reflected in the divisions of joint rates and charges received by Complainants from the transportation of the property above referred to.

XIII. That in view of the facts aforesaid, and particularly of the danger of Complainants' failing to earn, by more than $18,000,000, sufficient net railway operating income to pay their fixed charges during the coming year, the Complainants, during the past four months, have urged upon the most directly interested Defendants their rights to a more favorable readjustment of divisions of joint through rates, but have been unable to secure any action on the part of said Defendants toward that end.

XIV. That the divisions received by the Complainants out of the joint rates and charges referred to in Paragraphs IX, X, and X (*a*), have been and are unjust, unreasonable, inequitable, unduly prejudicial and otherwise in violation of paragraph 4 of section 1, and paragraph 6 of section 15 of the Interstate Commerce Act.

Wherefore the Complainants pray that the Defendants may be severally required to answer the charges herein; that after
56 hearing and investigation an order be made prescribing the just, reasonable and equitable divisions to be received by the

parties hereto from all joint rates and charges, and in case of joint rates on traffic not moving entirely within the United State- shall authorize the cancellation of such joint rates or such other action as shall assure just, reasonable and equitable compensation to the parties hereto for their services in connection with the transportation of such traffic; that the Commission shall determine what would have been the just, reasonable and equitable divisions of all joint rates and charges participated in by any of the parties hereto since the filing of this Complaint and require adjustment to be made in accordance therewith; that a further order be made determining a just and proper allocation between the Complainants of such increased revenues as may be awarded to them, and that such other and further order or orders be made as the Commission may consider proper in the premises.

Dated at Boston, Massachusetts, August 27, 1920.

BANGOR AND AROOSTOOK RAILROAD COMPANY,

By H. J. HART, *Its Attorney.*

Bangor, Maine.

BOSTON AND MAINE RAILROAD,
MONTPELIER AND WELLS RIVER RAILROAD,
THE ST. JOHNSBURY AND LAKE CHAMPLAIN RAILROAD COMPANY,

By W. A. COLE, *Their Attorney.*

Room 20, North Station, Boston, Mass.

CENTRAL VERMONT RAILWAY COMPANY,

By J. W. REDMOND, *Its Attorney.*

St. Albans, Vt.

57 MAINE CENTRAL RAILROAD COMPANY,
BRIDGTON AND SACO RAILROAD COMPANY,
SANDY RIVER AND RANGELEY LAKES RAILROAD,

By C. H. BLATCHFORD, *Their Attorney.*

232 St. John Street, Portland, Maine.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,
CENTRAL NEW ENGLAND RAILWAY COMPANY,

By E. G. BUCKLAND,
J. S. SWEENEY,
W. L. BARNETT, *Their Attorneys.*

General Office Building, New Haven, Conn.

RUTLAND RAILROAD COMPANY,
By E. W. LAWRENCE,
Its Attorney.

Rutland, Vt.

CHAS. F. CHOATE, JR.,
30 State St., Boston, Mass.;
WILBUR LA ROE, JR.,
Southern Building, Washington, D. C.,
Of Counsel.

APPENDIX A.

Carriers Defendant in Complaint Bangor & Aroostook Railroad Company et al. v. Aberdeen & Rockfish Railroad Company et als.

Aberdeen & Rockfish Railroad Company; Abilene & Southern Railway Company; The Akron, Canton & Youngstown Railway Company; Alabama & Mississippi Railroad Company; Alabama & Northwestern Railroad Company; Alabama & Vicksburg Railway Company; Alabama Central Railway; Alabama Central Railroad Company; Alabama, Florida & Gulf Railroad Company; Alabama Great Southern Railroad Company; The Alabama Northern Railway Company; Alabama, Tennessee & Northern Railroad Corporation; Albemarle Steam Navigation Company; Alcolu Railroad Company; The Algoma Central & Hudson Bay Railway Company; The Altamaha Navigation Company; Ann Arbor Railroad Company; Apalachicola Northern Railroad Company; Arcade & Attica Railroad Corporation; The Arizona & New Mexico Railway Company; Arizona Eastern Railroad Company; Arizona Southern Railroad Company; Ashland Coal & Iron Railway Company; Ashley & Bustin Steamer Line; The Atchison, Topeka & Santa Fe Railway Company; Atlanta & St. Andrews Bay Railway Company; Atlanta & West Point Railroad Company; Atlanta, Birmingham & Atlantic Railway Company; Atlantic & Carolina Railroad Company; Atlantic & Western Railroad Company; Atlantic & Yadkin Railway Company; Atlantic City Railroad Company; Atlantic Coast Line Railroad Company; Augusta Northern Railway;

Bachman Valley Railroad Company of Maryland; The Baltimore & Ohio Railroad Company; Baltimore & Ohio Chicago Terminal Railroad Company; Baltimore, Chesapeake & Atlantic Railway; Baltimore, Chesapeake & Atlantic River Lines; Bamberg, Ehrhardt & Waterboro Railway; Bath & Hammondsport Railroad Company; Bauxite & Northern Railway Company; The Beaumont, Sour Lake & Western Railway Company; The Belt Railway Company of Chicago; Bennetsville & Cheraw Railroad Company; Bessemer & Lake Erie Railroad Company; Big Fork & International Falls Railway Company; Big Sandy & Cumberland Railroad Company; Birmingham & Northwestern Railway Company; Birmingham & Southeastern Railway Company; Birming-

ham Southern Railroad Company; Black Mountain Rail-
59 way; Bloomsburg & Sullivan Railroad Company; Blue Ridge Railway Company; Bonlee & Western Railway Company; Boston & Albany Railroad Company (New York Central Railroad Company, lessee); Bowdon Railway Company; Boyne City, Gaylord & Alpena Railroad Company; Brownstone & Middletown Railroad Company; Brownwood North & South Railway Company; Buffalo & Susquehanna Railroad Corporation; Buffalo, Rochester & Pittsburgh Railway Company; Bullfrog-Goldfield Railroad Company; Bush Terminal Railroad Company; Butte, Anaconda & Pacific Railway Company;

Callahan Line; Camas Prairie Railroad Company; Cambria & Indiana Railroad Company; Canadian National Railways; Canadian Pacific Car & Passenger Transfer Company; The Canadian Pacific Railway Company; Carolina & Northeastern Railroad Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; The Carolina & Yadkin River Railway Company; Carolina, Clinchfield & Ohio Railway; Carolina, Clinchfield & Ohio Railway of South Carolina; Catskill New York Steamboat Company, Limited; Central California Traction Company; Central Indiana Railway Company; Central New York Southern Railroad Corporation; Central of Georgia Railway Company; The Central Railroad Company of New Jersey; Central Railway Company of Arkansas; Central West Virginia & Southern Railroad Company; Charleston & Western Carolina Railway Company; Charlotte, Monroe & Columbia Railroad Company; Chatham, Wallaceburg & Lake Erie Railway Company; Chattahoochee Valley Railway Company; The Chesapeake & Ohio Railway Company; The Chesapeake & Ohio Railway Company of Indiana; Chesapeake Steamship Company; Chesapeake Western Railway; Chesterfield & Lancaster Railroad Company; Chestnut Ridge Railway Company; The Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company and W. J. Jackson, receiver; Chicago & Erie Railroad Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago & North Western Railway Company; Chicago & West Ridge Railroad; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Kalamazoo & Saginaw Railway Company; Chicago, Memphis & Gulf Railroad Company; Chicago, Milwaukee &
60 Gary Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Peoria & St. Louis Railroad Company and Bluford Wilson and William Cotter, receivers; Chicago, Racine & Milwaukee Line; The Chicago, Rock Island & Gulf Railway Company; The Chicago, Rock Island & Pacific Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Chicago Short Line Railway Company; Chicago, Terre Haute & Southeastern Railway Company; Cincinnati, Burnside & Cumberland River Railway Company; Cincinnati, Georgetown & Portsmouth Railroad; The Cincinnati, Indianapolis & Western

Railroad Company; The Cincinnati, Lebanon & Northern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Cleveland & Buffalo Transit Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Cliffside Railroad Company; Clinton & Oklahoma Western Railway Company; Clinton, Davenport & Muscatine Railway Company; Coal & Coke Railway Company; Coeur d'Alene & Pend d'Oreille Railway Company; Coeur d'Alene & St. Joe Transportation Company; The Colorado & Southeastern Railroad Company; The Colorado & Southern Railway Company; Columbia, Newberry & Laurens Railroad Company; Cooperstown & Charlotte Valley Railroad Company; Copper Range Railroad Company; Cornwall Railroad Company; Coudersport & Port Allegany Railroad Company; Cumberland & Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; Cumberland Valley & Martinsburg Railroad Company;

Dansville & Mount Morris Railroad Company and A. S. Murray, receiver; Danville & Western Railway Company; The Dayton & Union Railroad Company; The Dayton, Toledo & Chicago Railway Company; The Delaware & Hudson Company; Delaware & Northern Railroad Company; The Delaware, Lackawanna & Western Railroad Company; the Denison & Pacific Suburban Railway Company; The Denver & Rio Grande Railroad Company and A. R. Baldwin, receiver; Detroit & Cleveland Navigation Company; The Detroit & Huron Railway Company; Detroit & Mackinac Railway Company; Detroit & Toledo Shore Line Railroad Company; Detroit, Bay City & Western Railroad Company; Detroit, Toledo & Ironton Railroad Company; Doniphan, Kensett & Searcy Railway; Dover & South Bound Railroad Company; The Due West Railway Company; Duluth & Northeastern Railroad Company; Duluth, Missabe & Northern Railway Company; The Du-
61 luth, South Shore & Atlantic Railway Company; Duluth, Winnipeg & Pacific Railway Company; Durham & Southern Railway Company;

Eagles Mere Railroad Company and Edward Bailey, receiver; East Berlin Railway Company; East Carolina Railway; Eastern Carolina Transportation Company; Eastern Texas Railroad Company; The East Jordan & Southern Railroad Company; The East St. Louis Connecting Railway Company; East Tennessee & Western North Carolina Railroad Company; Edgemoor & Manetta Railway Company; Elberton & Eastern Railroad Company; El Dorado & Wesson Railway Company; Elgin, Joliet & Eastern Railway Company; Elkin & Alleghany Railway Company; El Paso & Southwestern Company; Emmitsburg Railroad Company; Erie Railroad Company; Erie & Michigan Railway & Navigation Company; Escanaba & Lake Superior Railroad Company; Essex Terminal Railway; Esquimalt & Nanaimo Railway Company; Evansville & Indianapolis Railroad Company and W. P. Kappes, receiver;

Fairchild & Northeastern Railway; The Fairport, Painesville & Eastern Railroad Company; Felicity & Bethel Railroad Company;

Fernwood, Columbia & Gulf Railroad Company; Flint River & Northeastern Railroad Company; Florida East Coast Railway Company; Fonda, Johnstown & Gloversville Railroad Company; Fordyce & Princeton Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith & Western Railroad Company and A. L. Mills, receiver; Fort Wayne, Cincinnati & Louisville Railroad Company; The Fort Worth & Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Frankfort & Cincinnati Railway Company; Franklin & Pennsylvania Railroad Company; Frederickton & Grand Lake Coal & Railway Company; Furen Boat Line;

Gainesville & Northwestern Railroad Company; Gainesville Midland Railway; Galesburg & Western Railroad and T. M. Cox, receiver; The Galveston, Harrisburg & San Antonio Railway Company; Garyville Northern Railroad Company; Genessee & Wyoming Railroad Company; Georgia & Florida Railway and W. R. Sullivan, John F. Lewis, and L. M. Williams, receivers; The Georgia, Florida & Alabama Railway Company; Georgia Northern Railway Company; Georgia Railroad; Georgia Southern & Florida Railway Company; Georgia Southwestern & Gulf Railroad Company; The Gettysburg & Harrisburg Railway Company; Glenmort &
62 Western Railway; Goodrich Transit Company; Grand Rapids & Indiana Railway Company; The Grand River Railway Company; Grand Trunk Pacific Railway Company; Grand Trunk Railway Company of Canada; Grand Trunk Western Railway Company; Great Lakes Transit Corporation; The Great Northern Railway Company; The Great Western Railway Company; Green Bay & Western Railroad Company; Greene County Railroad Company; Gulf & Ship Island Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Gulf, Florida & Alabama Railway Company and John T. Steele, receiver; Gulf, Mobile & Northern Railroad Company; Gulf, Texas & Western Railway Company;

The Hagerstown & Frederick Railway Company; Hampton & Branchville Railroad & Lumber Company; The Hanover Railway Company; Harriman & Northeastern Railroad Company; Hartford Eastern Railway Company; Hartwell Railway Company; Hawkinsville & Florida Southern Railway Company; Helena, Parkin & Northern Railway Company and H. M. Gregory, receiver; High Point, Randleman, Asheboro & Southern Railroad Company; Hill Steamboat Line; Hoboken Manufacturers' Railroad Company; The Hocking Valley Railway Company; Houston & Brazos Valley Railway Company and George C. Morris, receiver; Houston & Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East & West Texas Railway Company; The Huntingdon & Broad Top Mountain Railroad & Coal Company;

Iberia & Vermilion Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway; Illinois Terminal Railroad Company; Illinois Traction Company; Indian Creek Valley Railway Company; Indiana Harbor Belt Railroad Company; Inland

Empire Railroad; International & Great Northern Railway Company and James A. Baker, receiver; Interstate Car and Transfer Company; The Interstate Railroad Company; Ironton Railroad Company; The Isabell Line;

Kalamazoo, Lake Shore & Chicago Railway Company; The Kanawha & Michigan Railway Company; Kanawha & West Virginia Railroad Company; Kane & Elk Railroad Company; Kansas & Sidell Railroad Company; Kansas City & Memphis Railway Company and J. E. Felker and R. C. Bright, receivers; The Kansas City, Clinton & Springfield Railroad Company; Kansas City, Kaw Valley & Western Railway; The Kansas City, Mexico & Orient Railroad Company and William T. Kemper, receiver; Kansas City, Mexico & Orient Railway Company of Texas; Kansas City Northwestern Railroad and L. S. Cass, receiver; The Kansas City
63 Southern Railway Company; Kansas, Oklahoma & Gulf Railway; Kentucky & Tennessee Railway; Kentwood, Greensburg & Southwestern Railroad Company; Kewaunee, Green Bay & Western Railroad Company; The Kinston-Carolina Railroad Company; Knoxville, Sevierville & Eastern Railway Company; Kosciusko & Southeastern Railroad Company;

Lackawanna & Wyoming Valley Railroad Company; La Crosse & Southeastern Railway Company; Lake Charles & Northern Railroad Company; Lake Erie & Northern Railway; The Lake Erie & Western Railroad Company; Lake Erie, Franklin & Clarion Railroad Company; Lake Superior & Ishpeming Railway Company; Lancaster & Chester Railway Company; Laona & Northern Railway Company; Laurel Fork Railway Company; Laurenceville Branch Railroad; Lawndale Railway & Industrial Company; Laurinburg & Southern Railroad Company; The Lehigh & Hudson River Railway Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; Lehigh Valley Transportation Company; Liberty-White Railroad; Linville River Railway Company; Litchfield & Madison Railway Company; Little Kanawha Railroad Company; London & Port Stanley Railway; The Long Island Railroad Company; The Lorain & West Virginia Railway Company; The Lorain, Ashland & Southern Railroad Company; Los Angeles & Salt Lake Railroad Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Louisiana Southern Railway Company; Louisiana Western Railroad Company; Louisville & Nashville Railroad Company; Louisville & Wadley Railroad Company; Louisville Bridge & Terminal Railroad; Louisville, Henderson & St. Louis Railway Company; Louisville, New Albany & Corydon Railroad Company; The Lowville & Beaver River Railroad Company;

Macon & Birmingham Railway Company and H. W. Miller, receiver; Macon, Dublin & Savannah Railroad Company; Manchester & Oneida Railway Company; Manistee & Northeastern Railroad and The Michigan Trust Company, receiver; Manistique & Lake Superior Railroad Company; Marianna & Blountstown Railroad Company; Marinette, Tomahawk & Western Railroad Company;

Marion Railway Corporation; Marion & Southern Railroad; Marquette & Bessemer Dock & Navigation Company; Maryland & Pennsylvania Railroad Company; Maryland, Delaware & Virginia Railway Company; The Maryland Electric Railways Company; Maxton, Alma & Southbound Railroad Company of
64 Alma, N. C.; Memphis, Dallas & Gulf Railroad Company; Merchants & Planters Steamboat Company; Meridian & Memphis Railway Company; The Michigan Central Railroad Company; Michigan Railroad Company; Michigan Railway Company; Middletown & Unionville Railroad Company; Midland Continental Railroad; Midland Railway Company; Midland Railway Company of Manitoba; Midland Valley Railroad Company; Milstead Railroad Company; Mineral Point & Northern Railway Company; Mineral Range Railroad Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, Northfield & Southern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Minnesota & International Railway Company; Mississippi Central Railroad Company; Missouri & Illinois Bridge & Belt Railroad Company; Missouri & North Arkansas Railroad Company and C. A. Phelan, receiver; Missouri, Kansas & Texas Railway Company and C. E. Schaff, receiver; Missouri, Oklahoma & Gulf Railway Company of Texas; Missouri Pacific Railroad Company; Mobile & Ohio Railroad Company; The Monongahela Railway Company; Montour Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Morgantown & Kingwood Railroad Company; Morristown & Erie Railroad Company; Mount Jewett, Kinzua & Riterville Railroad Company; Munising, Marquette & Southeastern Railway Company; Muscatine, Burlington & Southern Railroad Company;

Napierville Junction Railway Company; Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company; Natchez Columbia & Mobile Railroad Company; Nevada-California-Oregon Railway; The Nevada Northern Railway Company; New Holland Boat Line; New Jersey & New York Railroad Company; New Jersey, Indiana & Illinois Railroad Company; New Mexico Central Railway Company; New Orleans & Northeastern Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany & Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; The New York & Long Branch Railroad Company; New York & Pennsylvania Railway Company; The New York Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; New York, Ontario & Western Railway Company; New York, Philadelphia & Norfolk Railroad Company; New York, Susquehanna & Western Railroad Company; Norfolk & Washington Steamboat Company; Norfolk & Western Railway Company; Norfolk Southern Railroad Company; Northampton & Bath Railroad Com-
65 pany; Northern Alabama Railway Company; Northern Navigation Company, Limited; The Northern Ohio Railway Company; Northern Pacific Railway Company; North River Line;

Northwestern Pacific Railroad Company; Northwestern Railroad of South Carolina; Norton & Northern Railway; Norwood & St. Lawrence Railroad Company;

Ocilla Southern Railroad and M. W. Garbutt, J. A. J. Henderson, and J. F. Gray, receivers; Oconee Steamboat Company; Ohio Electric Railway Company; The Oklahoma, New Mexico & Pacific Railway Company; Ontario Car Ferry Company, Limited; The Orange & Northwestern Railroad Company; Orangeburg Railway and C. E. Denniston, receiver; Oregon Electric Railway Company; Oregon Short Line Railroad Company; Oregon Trunk Railway Company; Oregon-Washington Railroad & Navigation Company;

Pacific Coast Railroad Company; Pacific Electric Railway Company; Pacific Great Eastern Railway Company; Pacific Northwest Traction Company; Pacific Steamship Company; Panhandle & Santa Fe Railway Company; Paris & Great Northern Railroad Company; Paris & Mount Pleasant Railroad Company and R. W. Wortham, receiver; The Peninsular & Occidental Steamship Company; The Pennsylvania Railroad Company; The Pennsylvania Railroad Company, Western Lines; Pennsylvania-Ontario Transportation Company; Peoria & Pekin Union Railway Company; Peoria Railway Terminal Company; Pere Marquette Line Steamers; Pere Marquette Railway Company; Perquimans River Line; Petaluma & Santa Rosa Railroad Company; Philadelphia & Reading Railway Company; Phillips & Ashmore Boat Line; The Pickens Railroad Company; Piedmont & Northern Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburg & Shawmut Railroad Company; Pittsburg & Susquehanna Railroad Company; The Pittsburgh & West Virginia Railway Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Pittsburgh, Lisbon & Western Railroad Company; The Pittsburg, Shawmut & Northern Railroad Company and F. S. Smith, receiver; Pontiac, Oxford & Northern Railroad Company; Port Chester Transportation Company; Portland Railway, Light & Power Company; Port Townsend & Puget Sound Railway; Prattsburg Railway Corporation; Prescott & Northwestern Railroad Company; Preston Railroad Company;

66 Puget Sound Navigation Company; Pullman Railroad Company;

Quanah, Acme & Pacific Railway Company; Quebec Central Railway; The Que'ec, Montreal & Southern Railroad Company; Quincy, Omaha & Kansas City Railroad Company;

Rahway Valley Company; Raleigh & Charleston Railroad Company; Randolph & Cumberland Railway Company; The Rapid Railway Company; Rapid Railroad Company; Raritan River Railroad Company; Red River & Gulf Railroad Company; Reynoldsville & Falls Creek Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Rio Grande & Eagle Pass Railway Company; Rio Grande, El Paso & Santa Fe Railroad Company; Roanoke River Steamboat Com-

pany; Rockingham Railroad Company; Rock Island Southern Railway Company and T. H. Beacom and W. T. Abbott, receivers; Rome & Northern Railroad Company and D. B. Carson, receiver; Rocoe, Snyder & Pacific Railway Company; Rural Valley Railroad;

The St. Joseph & Grand Island Railway Company; St. Louis & Hannibal Railroad Company; The St. Louis, Brownsville & Mexico Railway Company; St. Louis, El Reno & Western Railway Company and Arthur L. Mills, receiver; St. Louis, Kennett & Southeastern Railroad Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis-San Francisco Railway Company; St. Louis-San Francisco & Texas Railway Company; St. Louis Southwestern Railway Company; St. Louis Transfer Railway Company; Sacramento Northern Railroad; The Salina Northern Railroad Company and H. C. Brent and P. W. Goebel, receivers; Salt Lake & Utah Railroad Company; San Antonio & Aransas Pass Railway Company; San Antonio, Uvalde & Gulf Railroad and A. R. Ponder, receiver; Sandersville Railroad Company; San Diego & Arizona Railway Company; Sand Springs Railway Company; San Francisco-Sacramento Railroad Company; Santa Maria Valley Railroad Company; Savannah & Atlanta Railway; Savannah & Statesboro Railway Company; Seaboard Air Line Railway Company; The Sharpsville Railroad Company and G. M. McIlvain, receiver; Shearwood Railway Company; Sheffield and Tionesta Railway Company; Shippers Navigation Company; Skagit River Navigation & Trading Company; Smithonia & Dunlap Railroad Company; South Brooklyn Railway Company; Southern Pacific Company; Southern Railway Company; Southern Railway Company in Mississippi; South
67 Georgia Railway Company; Spokane & British Columbia Railway; Spokane & Eastern Railway & Power Company; Spokane International Railway Company; Spokane, Portland & Seattle Railway Company; The Staten Island Rapid Transit Railway Company; Stewartstown Railroad Company; Stone Harbor Terminal Railroad Company; Sumter & Choctaw Railway Company; Sylvania Central Railway Company;

Tallulah Falls Railway Company; Temiskaming & Northern Ontario Railway; Tennessee & North Carolina Railroad Company and James G. Campbell, receiver; Tennessee, Alabama & Georgia Railroad Company; Tennessee Central Railroad Company and H. W. Stanley and W. H. McAllister, receivers; Tennessee, Kentucky & Northern Railroad Company; Tennessee Railway Company and J. N. Baker, receiver; Terminal Railroad Association of St. Louis; Texarkana & Fort Smith Railway Company; Texas & New Orleans Railroad Company; The Texas & Pacific Railway Company and J. L. Lancaster and Charles L. Wallace, receivers; Texas City Terminal Company; The Texas Mexican Railway Company; Texas Midland Railroad; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Texas Southeastern Railroad Company; Texas State Railroad; Thornton & Alexandria Railway Company; The Thousand Islands Railway Company;

Tide water Southern Railway; Tionesta Valley Railway Company; The Toledo & Ohio Central Railway Company; Toledo, Peoria & Western Railway Company and C. N. Armstrong, receiver; Toledo, St. Louis & Western Railroad Company and W. L. Ross, receiver; Tonopah & Goldfield Railroad; Tonopah & Tidewater Railroad Company; The Toronto, Hamilton & Buffalo Railway Company; The Trinity & Brazos Valley Railway Company and John A. Hulen, receiver; The Tuckerton Railroad Company; Tucson, Cornelia & Gila Bend Railroad Company; Tug River & Kentucky Railroad Company; Tuskegee Railroad Company;

The Ulster & Delaware Railroad Company; Unadilla Valley Railway Company; Union & Glenn Springs Railroad Company; Union Pacific Railroad Company; Union Point & White Plains Railroad Company; Union Railway Company (Memphis); Union Railroad Company; United Railways Company; Utah-Idaho Central Railroad Company;

Valdosta, Moultrie & Western Railway Company; The Valley Railroad Company (of New York); Valley Railroad Company (of West Line, Pa.); The Valley Railroad Company of Virginia; Vancouver, Victoria & Eastern Railway & Navigation Company; Vicksburg, Shreveport & Pacific Railway Company; Virginia &
68 Carolina Southern Railroad Company; The Virginian Railway Company; Visalia Electric Railroad Company;

The Wabash, Chester & Western Railroad Company and J. Fred. Gilster, receiver; Wabash Railway Company; Wadley Southern Railway; Walla Walla Valley Railway Company; The Wanchese Line; Ware Shoals Railroad; Warren & Ouachita Valley Railroad Company; Warren, Johnsville & Saline River Railroad Company; Washington & Lincolnton Railroad Company; Washington & Old Dominion Railway; Washington & Vandemer Railroad Company; Washington, Baltimore & Annapolis Electric Railroad Company; Washington, Idaho & Montana Railway Company; Washington Run Railroad Company; Waterloo, Cedar Falls & Northern Railway Company; Watertown & Sioux Falls Railway Company; Waupaca-Green Bay Railroad Company; Waycross & Southern Railroad Company; Waycross & Western Railroad Company; Wellington & Powellsville Railroad Company; Western & Atlantic Railroad Company; Western Allegheny Railroad Company; Western Maryland Railway Company; The Western Pacific Railroad Company; The Western Railway of Alabama; Westfield Railroad Company; West Jersey & Seashore Railroad Company; West Shore Railroad Company (New York Central Railroad Company, lessee); West Side Belt Railroad Company; West Virginia Northern Railroad Company; Wharton & Northern Railroad Company; The Wheeling & Lake Erie Railway Company; White Sulphur Springs & Yellowstone Park Railway Company; The Wichita Falls & Northwestern Railway and C. E. Schaff, receiver; The Wichita Valley Railway Company; Wiggins Ferry Company; Wildwood & Delaware Bay Short Line Railroad Company; Wilkes-Barre & Eastern Railroad Company; Wilkes-Barre & Hazelton Railway Company; Willamette Valley Southern Railway Company; Will-

iamson & Pond Creek Railroad Company; Williamsport & North Branch Railroad Company and Edward Bailey, receiver; The Williams Valley Railroad Company; Wilmington, Brunswick & Southern Railroad Company; Windsor, Essex & Lake Shore Rapid Railway; The Winfield Railroad Company; Winston-Salem Southbound Railway Company; Wisconsin & Michigan Railroad Company; Wisconsin & Northern Railroad Company; Wrightsville & Tennille Railroad Company;

Yadkin Railway Company; Yakima Valley Transportation Company; The Yazoo & Mississippi Valley Railroad Company; The Youngstown & Ohio River Railroad Company; and the Zanesville & Western Railway Company.

69

EXHIBIT D.

Interstate Commerce Commission.

New England Divisions.

No. 11756.

BANGOR & AROOSTOOK RAILROAD COMPANY et al.

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY et al.

Submitted April 23, 1921. Decided July 6, 1921.

Upon complaint that divisions of joint rates on property transported between points on the lines of defendants and points in New England on the lines of complainants were and are violative of certain provisions of the interstate commerce act. Held, That:

1. No basis is afforded for a valid prescription of divisions, but it is shown that just, fair, and equitable divisions can not, in many instances, flow from existing arrangements.

2. Record held open for submission of proposed readjustments.

Charles F. Choate, jr., Wilbur La Roe, jr., E. G. Buckland, James Garfield, Charles H. Blatchford, W. A. Cole, William L. Barnett, J. C. Sweeney, and Henry Hart for complainants.

F. I. Gowen, Clyde Brown, W. C. Noyes, H. A. Taylor, A. H. Elder, H. W. Bikle, H. T. Newcomb, John C. Bills, N. S. Brown, W. S. Bronson, Bird M. Robinson, B. B. Cain, Allen McCarty, D. Lynch Younger, Charles J. Rixey, jr., W. N. McGehee, Theodore Reath, E. W. Knight, and W. H. T. Loyall for defendants.

CLARK, *Chairman:*

On behalf of certain interstate steam railroads[1] operating almost entirely within New England it is alleged, in effect, that divisions accruing to them out of the *joint* freight rates increased pursuant to Increased Rates, 1920, 58 I. C. C., 220, hereinafter referred to as Ex Parte 74, between points in New England on their lines and all other points in the United States and adjacent foreign countries, particularly the Dominion of Canada, were and are in violation of paragraph (4), and paragraph (6), section 15, of the interstate commerce act.*

We are asked (*a*) to prescribe just, reasonable, and equitable divisions for the future; (*b*) to require the cancellation of all joint rates and charges on traffic not moving entirely within the United States, or to authorize such other action as shall assure just, reasonable, and equitable compensation to the parties for their services in connection with such traffic; (*c*) to determine what would have been the just, reasonable, and equitable divisions of all joint rates

[1] Bangor & Aroostook Railroad Company; Boston & Maine Railroad; Central New England Railway Company; Central Vermont Railway Company; Maine Central Railroad Company; New York, New Haven & Hartford Railroad Company; Rutland Railroad Company; and their subsidiaries and operated lines.

*The pertinent portion of paragraph (4), section 1, is as follows: It shall be the duty of every common carrier subject to this Act engaged in the transportation of passengers or property * * * in case of joint rates, fares, or charges, to establish just, reasonable and equitable divisions thereof as between the carriers subject to this Act participating therein which shall not unduly prefer or prejudice any of such participating carriers.

Paragraph (6), section 15, is as follows: Whenever, after full hearing upon complaint or upon its own initiative, the Commission is of opinion that the divisions of joint rates, fares, or charges, applicable to the transportation of passengers or property, are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto (whether agreed upon by such carriers, or any of them, or otherwise established), the Commission shall by order prescribe the just, reasonable and equitable divisions thereof to be received by the several carriers, and in cases where the joint rate, fare, or charge was established pursuant to a finding or order of the Commission and the divisions thereof are found by it to have been unjust, unreasonable, or inequitable, or unduly preferential or prejudicial, the Commission may also by order determine what (for the period subsequent to the filing of the complaint or petition or the making of the order of investigation) would have been the just, reasonable, and equitable divisions thereof to be received by the several carriers, and require adjustment to be made in accordance therewith. In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate or delivering line, and any other fact or circumstance which would ordinarily without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge.

and charges participated in by any of the parties hereto since the filing of the complaint; (*b*) to require adjustment to be made in accordance therewith; and (*c*) to determine a just and proper allocation among the complainants of such increased revenue as may be awarded to them.

71 Complainants urge that the divisions be treated "as a whole," not individually; that is, that blanket increases be applied to the divisions without regard to the specific divisions of individual joint rates. They have suggested, among others, the following methods by which this might be done:

(1) Graded percentages that will reflect in the various divisions a definite additional amount which the complainants should receive in excess of what they now receive, apportioned in reverse ratio to the present divisions; in other words, the highest divisions to be increased the least percentage, and vice versa.

(2) Fifteen per cent of the total amount accruing to the lines west of the Hudson River from divisions on traffic interchanged with complainants to be transferred to the latter to afford them an additional amount of revenue approximating $25,000,000.

72 This plan, it is urged, has the advantages of simplicity, flexibility, and definiteness; would permit the pooling and redivision of the total amount among the various complainants; the amounts paid to the complainants would be in absolute proportion to the amounts received by all the defendants jointly and severally; and while the plan remained in effect, divisions of particular rates could be examined and revised until all of the divisions were properly apportioned, when the plan could be discontinued.

(3) By the use of road-to-road per cents, combined into a road-to-New England per cent, a resumption of the method of dividing rates in vogue during federal control, now applicable on some traffic to New England as to which divisions have not been reestablished since the termination of federal control, and on interline New England traffic between the Boston & Maine and the New Haven. Under this plan such road-to-New England per cents would be worked out for each defendant on the basis of normal traffic conditions, and then appropriate changes would be made in these per cents to increase the revenue received by complainants.

It is urged for defendants that the complainants are not in reality asking the fixation of just, equitable divisions of joint rates between themselves and other carriers, but that they seek, in substance, the transfer to them of a fixed amount to be arbitrarily deducted solely from the revenues of the carriers operating in eastern trunk line and central territories, to be "allocated" among the complainants,

73 not in relation to the traffic which they interchange with the carriers outside of New England, but according to their failure to receive, out of the joint rates established pursuant to Ex Parte 74, a return upon the value of their property held for and used in the service of transportation as large relative as the return received in the aggregate by defendants. In other words, that

the allegation of unjust divisions is only a means by which to secure the adjustment of an alleged claim flowing from the fact that the complainants, among other carriers in New England, were included with certain of the defendants in a group designated by us in accordance with the provisions of the interstate commerce act. It is insisted that we may not erect a subgroup in a divisional case, especially one composed of these complainants alone, and consider divisions "as a whole"; that the statute limits our power to prescribing divisions "as between the carriers" parties to the joint rates and that after considering, "among other things," all of the elements specified in the act, none of which is dominating, we must determine how much each carrier shall receive of each joint rate; that the application of a general principle would obviously produce divisions which would be unjust, unreasonable, and inequitable as between the individual carriers, and that the general principles governing the prescribing of divisions differ from those observed in authorizing rates under section 15*a* of the interstate commerce act, principally because the latter are made to produce a fair return for the carriers "as a whole," individual rates being subject to review in separate proceedings.

The divisions exhibited by complainants are of first and sixth class rates and of some few commodities rates on so-called
74 merchandise traffic, the arrangements applying to class rates and to commodities which are classified. Coal and coke are not classified in the official classification, and as there is no evidence with respect to the divisions of the rates on these commodities, no finding can be made with reference thereto. Nor is it understood that the division arrangements exhibited are applicable to fluid milk and the edible products thereof, high explosives, fresh meat in carloads; or to short-haul transportation of low-class commodities.

With respect to commodities moving in foreign commerce, we are not asked to determine whether or not the divisions of the rates are just, reasonable, and equitable, but to require the cancellation of all joint rates and charges on such traffic or to authorize such other action as shall require just, reasonable, and equitable compensation to the parties for their services in connection therewith. Nothing of record bears on the cancellation of the joint rates. With respect to the divisions which now accrue to the complainants out of the joint rates with their Canadian connections, it should be observed that our jurisdiction inheres only in so far as the transportation takes places within the United States.

The "importance to the public of the transportation services of" the complainants is conceded, and of it we take judicial notice, as well as of that of the principal defendants.

"The efficiency with which the carriers concerned are operated" is impossible of determination on the record, comprehending, as it does, all common carriers in the United States that are subject to
our jurisdiction. Some general evidence was offered by com-
75 plainants indicating that in the units of operating efficiency the degree of improvement in New England during the last

few years has been as great as or greater than the remainder of the eastern group. The specific evidence relates mainly to the operations of the New Haven. For that carrier it is shown that since 1915 it has increased its net ton-miles 35 per cent, decreased its freight-train miles 5.8 per cent, increased its passenger-train miles 7.5 per cent, and increased the number of passengers carried 1 mile to 36 per cent, notwithstanding the transportation department of that road has been operated with a constantly decreasing number of man-hours.

The elements which the complainants contend should or must be considered by us in determining whether their divisions accord with the provisions of the act are, their financial needs; their operating handicaps, some of the more important of which are said to flow from the terminal character of complainants' operations; the alleged disproportionate effect of recent wage increases upon their operating expenses; the increased cost of locomotive fuel and other railroad materials and supplies; per diem or freight-car hire; and the peculiar character of their traffic. It is said that complainants have very little traffic in the carriage of which they are intermediate carriers having no terminal expense; that their operations embrace large percentages of less-than-carload and passenger traffic; that they receive a larger percentage of raw materials than they forward of manufactured products; that they have little tonnage of low-grade commodities moving in volume; and that it is impossible for them to obtain as large a transportation product from a given amount
76 of labor as is possible in other parts of the eastern group.

The density of complainants' traffic is relatively low and the diversity of their routes, the diffusion of their traffic over New England, their numerous junction points, stations, branch lines, and switching yards permit only comparatively short hauls. In general, complainants endeavor to demonstrate that since the present divisions were established their costs of operation have increased relatively much more than have those of carriers in eastern trunk line and central territories.

It is asserted for complainants that they have demonstrated that the divisions they receive are inadequate "as a whole," even when tested by the standard of mileage. They urge, however, that "the amount of service rendered by the several carriers participating in a joint rate is no longer controlling," and that "mileage is no longer the yardstick by which divisions are to be measured." They urge that paragraph (6), section 15, of the interstate commerce act is revolutionary in that it subordinates the mileage haul and stresses certain other specified considerations which have no relation thereto, and that the provision that those factors shall be considered by us "without regard to the mileage haul" is, in a sense, the most important change in the law in respect of our power over divisions.

Locally, the needs of the New England carriers have had our consideration before. The New England Investigation, 27 I. C. C., 560; Financial Investigation of N. Y., N. H. & H. R. R. Co., 31 I. C. C., 32; Proposed Increases in New England, 49 I. C. C., 421; and Ex Parte 74, supra. We have recognized in the proceedings

cited the peculiar local transportation difficulties encountered
77 by the New England lines. In Proposed Increases in New England, supra, at pages 423-424, we said:

The transportation problem of New England is in many respects distinctive. This grows in part out of geographic conditions and to a still greater extent out of industrial and economic conditions. The New England lines serve directly almost none of the territory outside of New England, and they must depend in considerable part, so far as freight traffic is concerned, upon the tonnage interchanged with their rail connections to the west and north and with steamship lines serving the New England ports. For these reasons, and because they participate in only a part of the haul on through freight traffic into and out of New England, the New England lines have sometimes been referred to as "mere terminal or switching railroads," a statement that is misleading if strictly interpreted, but not wholly without value as suggesting a reason for some of the difficulties encountered by these carriers.

Another unusual feature of the New England situation is the character of the freight traffic. In no other section of the country does so large a percentage of the tonnage consist of high-grade manufactured products. Barring products of the forest and of the quarries the outbound movement of raw materials from New England is almost negligible. New England's industrial life depends largely upon importing large quantities of iron, cotton, wool, and other raw materials from the west and south and converting them into finished products. Power used in New England for these manufacturing processes is mainly derived from coal originating outside of New England and transported substantial distances by rail or water. It is estimated that for every three carloads of manufactured products moving west from New England five carloads of raw materials move eastbound into New England. Consequently there is a heavy movement of empty cars from New England to the west. One embarrassing result of this poorly balanced movement of traffic is that the New England carriers sometimes find it impossible to return cars to their western connections as fast as they receive them. This difficulty has been increased during the past two or three years by inadequacy of transportation facilities and delay at terminals. It results that the railroads in southern New England have for some time found their tracks and terminals blocked with cars, and their bad financial
situation has been made much worse by reason of car per diem
78 expenses. During the two years ended June 30, 1917, the single item of hire of equipment for the New Haven and Boston & Maine amounted to approximately $9,638,000, or 50 per cent of the combined net corporate income of the two railroads during the two-year period. For the year ended December 31, 1916, the item of hire of freight cars, debit balance, was $2,623,507 for the New Haven and $2,561,723 for the Boston & Maine. As this case is in essence a rate revenue case, this heavy drain upon the resources of the New England carriers cannot pass unnoticed.

Another peculiarity of the New England situation is the relatively large proportion of revenue derived by the carriers in southern New England from passenger traffic. During the year ended June 30, 1917, 45 per cent of the New Haven's revenue and 34 per cent of the Boston & Maine revenue were derived from passenger and allied traffic.

It is insisted for defendants that if special difficulties exist in New England it must be that they flow, not from the traffic interchanged with the connections of complainants, but from local conditions. Complainants' principal statistical witness states that the high proportion of traffic local to New England may have an adverse effect on operating costs. Obviously, all interchange carload traffic originated by the complainants in New England destined to points throughout the remainder of the United States and in the Dominion of Canada must be distributed by the defendants; all interchange traffic from points outside of New England delivered by the complainants must have originated at some point on defendants' lines, and the expense of furnishing cars and other expenses incident to its origination must have been borne by one or more of them. Inasmuch as the volume of interchange tonnage into New England considerably exceeds the outbound movement, the defendants must have the expense incident to originating and furnishing cars for a larger proportion of the interchanged traffic, and it must follow
79 that it is usually less difficult for the shippers on the complainants' lines to be supplied with empty cars. It also follows that complainants have the expense of returning many empty cars without load to defendants.

There is no break of bulk of carload shipments during the transportation, and therefore the type of the car, the commodity, the weight of the load, and many other incidents of the through joint haul must be the same within and without New England. Defendants assert that the only conditions peculiar to New England are (*a*) a high proportion of passenger-train mileage to a total train mileage, which prevails only in the densely populated section of southern New England; (*b*) the high proportion of less-than-carload freight as compared with the total tonnage, which must be transferred and handled en route by the defendants with a constantly decreasing load as the haul increases; (*c*) the substantial volume of traffic moving by water from and to New England owing to the concentration of about 73 per cent of the population within 50 miles of the coast line, the remainder of the territory being more sparsely settled; (*d*) the fact that New England is contingnous only on the west to eastern trunk line territory; and (*e*) the character of the products of New England manufacturers. These peculiarities, in the view of the defendants, afford no warrant for increasing divisions of joint rates, and for them it is asserted that the conditions in New England are in other respects essentially like those in other territories.

The distinctive transportation characteristics of New England, complainants contend, should here be given controlling
80 weight. However, it is their view that we must consider as the dominant factor "the amount of revenue required to pay

their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation."

Based on a property investment of $838,274,769 of the seven complainant roads as of October 31, 1919, it is estimated that they obtained a net railway operating income for the year ended June 30, 1920, adjusted, of $8,696,666, a return of approximately 1.04 per cent on the property investment. Their fixed charges, based on the same adjusted year, were $34,783,380; their nonoperating income, $7,170,256; and their "net" fixed charges $27,613,124. Thus, the complainants show that they failed to meet their fixed charges for the year ended June 30, 1920, by $18,916,458. Taking the actual results of the first four months of a year ending August 31, 1921, and estimating the remainder of the year therefrom, complainants forecast that they may fail to meet their fixed charges for the year 1921 by $27,386,975. This estimate attempts to make allowance for diminution in traffic. The results of operation for the months of September and October, 1920, indicate that traffic fell off and that the net income for those two months, after the payment of fixed charges, was a deficit of $3,591,183.

The property investment shown by the complainants includes $40,213,406, alleged to represent the value of the contract rights of the New Haven in the New York terminals of the New York Central, and about $8,500,000 for the investment in the Portland Terminal Company, which is controlled by the Maine Central through
81 ownership of the entire capital stock. The preliminary reports of our bureau of valuation indicate that the cost of reproduction new of the lines of complainants was $760,195,671, and the present value of land $161,229,938, a total of $921,425,609.

The ratios of net railway operating income to property investment of five of the complainants and of the principal lines in the eastern group other than such New England lines for the years ended June 30, 1913, to 1917, inclusive, and the calendar year 1919, and the ratios of deficit to property investment for 10 months of 1920, are shown in the following statement:

	1913.	1914.	1915.	1916.	1917.	1919.	1920 (10 mos.).
New England.....	4.88	3.82	4.75	6.01	5.68	1.02	*3.10
Eastern group less New England	5.10	3.79	4.20	6.43	5.63	1.84	*.92

The property investment upon which the ratios are based excludes materials and supplies. On the surface the statement does not indicate that in periods prior to the recent large increases in wages and rates these complainants were weak roads as compared with the defendants in the eastern group. Comparing individual roads, it may be observed that the Central of New Jersey, the Erie, including the Chicago & Erie, the Pennsylvania, lines east as well as lines west, the New York, Ontario & Western, the Delaware & Hudson, and many others outside of New England earned a less per cent of their standard return during the period of federal control than did the New Haven, and that in several instances the percentage of operating

*Ratio of deficit.

income to property investment for the first 10 months of 1920 for some of the direct connections of the complainants showed a deficit greater than the average for all the New England roads.

82 One basis for the complainant is set forth in paragraph VIII thereof as follows:

In the recent proceedings before the Commission in Ex Parte 74 (Increased Rates, 1920, 58 I. C. C., 220) the complainants and such of the defendants as are situated in that section of the country known to the Commission as official classification territory were included in one rate group; as a result of the inclusion of complainants' property investment accounts and revenue requirements in the same rate group with said defendants, the amount of additional revenue necessary for the carriers in the group as a whole was increased to such an extent that the defendants in said group will receive annually approximately $25,000,000 in revenue in excess of what they would have received if the complainants had not been included in said group.

During the pendency of Ex Parte 74 our attention was directed to this contention of the lines in New England and to the fact that an average percentage increase for official classification territory as a whole would not meet the needs of the New England carriers. We found, however, with certain exceptions, that general percentage increases made to fit the needs of the groups of lines serving each of the four groups designated by us must be considered for the then present purposes the most practicable, without prejudice to any subsequent finding in individual situations, stating, at page 247, that——

While the New England carriers are included in the eastern group and are subject to the percentage for that group, the evidence as to the disproportionate needs of the New England lines makes it desirable that the carriers give careful consideration to the divisions of joint rates accruing to these lines.

A brief and necessarily general outline of the basis for the allegation of paragraph VIII of the complaint follows: New England, located in official classification territory, was included in the

83 eastern group of boundaries of which are practically coterminous with those of official classification territory. The complainants do not contend that New England was included therein without their consent, nor do they ask that it be separated therefrom. For rate-making purposes, official classification territory has been subdivided into New England, eastern trunk line, and central territories; the first coterminous with New England; the second, that portion of the United States west of Vermont, Massachusetts, and Connecticut, north of the line of the Norfolk & Western and east of a li*en* drawn through Buffalo, N. Y., and Pittsburgh, Pa.; and the third, that portion of the United States lying west of the Buffalo-Pittsburgh line, north of the Ohio River and east of the Mississippi River, excluding the greater portion of Wisconsin and the northern peninsula of Michigan. The financial needs of the carriers, estimated in part, were based upon statistical data derived from questionnaires sent to the individual carriers, their original proposal not having made allowance for the wage award made by the United

States Railroad Labor Board July 20, 1920, after the close of the hearings. Data for 51 class-I systems, 39 class-II, 30 class-III, and 24 switching and terminal companies were considered in the proposals for the eastern group.

After our decision in Ex parte 74, the assertion of the New England carriers that they had lost and the other carriers in the eastern group had gained by the inclusion of New England in that group was considered by a conference of the executives of the eastern roads. For informal discussion data taken from the questionnaires for a constructive year ended October 31, 1919, were assembled separately for the complainants and the Boston & Albany; for class-I roads in the eastern trunk line territory; and for class-I roads in central territory, the other classes of roads being excluded. From these data it was computed by an expert of one of the defendants that the eight New England carriers, the eastern trunk line carriers, and the central territory carriers, prior to the wage award of the labor board, required to produce a net return of 6 per cent on their property investment, increases in their freight and switching revenues amounting to 47.407, 29.767, and 24.431 per cent, respectively. All of the carriers in the eastern group, considered "as a whole," required an increase of 29.461 per cent, but if the carriers in the eastern trunk line and central territories had been embraced in a separate group, they would have needed only 27.981 per cent increase. Accordingly, complainants contend that, due to their inclusion in the eastern group, they lost, and the other carriers in the group gained 1.48 per cent of the total freight and switching revenues prospectively derivable from the increases allowed in Ex Parte 74. Stated more specifically, the freight and switching revenues of the eight New England carriers for the constructive year were $136,298,531, and they needed 47.407 per cent of that amount in addition, or $64,615,799. Mathematically they received, or will receive, only the average per cent for the group as a whole, 29.461 per cent, or $40,150,939, a difference of $24,464,860, or 17.946 per cent, which they state might be allocated among themselves and the Boston & Albany by a similar mathematical process, as follows:

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	Per cent of increase in freight revenues to produce 6 per cent on property investment, 47.407.	Less average per cent of eastern group, 29.461.	Adjustment to equalize all roads.
Bangor & Aroostook	57.15	27.69	$1,086,003
Boston & Albany	29.81	.35	51,059
Boston & Maine	34.95	5.49	2,507,444
Central New England	57.35	27.89	1,678,057
Central Vermont	72.85	43.39	1,930,384
Maine Central	51.37	21.91	2,452,489
New York, New Haven & Hartford	58.56	29.10	13,946,930
Rutland	61.59	32.13	812,494
Eight carriers	47.401	.....	$24,464,860

Of the above amount defendaants' expert computed that about two-thirds was gained by the eastern trunk lines and about one-third by the central territory carriers. On this statistical basis the eastern trunk lines, considered as a separate group, also suffered by their inclusion in the eastern group to the extent of the difference between the per cent of their freight and switching revenues needed to be increased, 29.797 per cent, and the per cent of the group as a whole, 29.461 per cent, and the central territory carriers benefited to the extent of the difference in the per cent of their needs, 24.434, and the percent of the group as a whole. In other words, theoretically the eastern trunk lines, by their inclusion in the eastern group, lost $3,374,276 and the central territory carriers gained $27,811,393. The statistical situation in respect of the trunk line carriers with which the complainants have direct connections follows:

	Per cent plus or minus 29.461.	Gain.	Loss.
Central Railroad of New Jersey....	3.05 plus	$1,000,737	.....
Delaware & Hudson.....	6.05 plus	1,801,608	.....
Delaware, Lackawanna & Western.	19.99 plus	10,498,606	.....
Lehigh & New England.....	22.86 plus	866,242	.....
New York Central, lines east.....	13.09 plus	23,771,538	.....
Erie	16.38 minus	.....	$13,701,630
Lehigh Valley.....	0.26 minus	.....	139,187
New York, Ontario & Western*....	63.21 minus	.....	3,957,708
Pennsylvania, lines east.....	10.24 minus	.....	28,347,266
Total		37,938,731	46,145,791
Net loss		.....	8,207,060

86 However, the so-called Pocahontas lines; that is, the lines of the Chesapeake & Ohio, Norfolk & Western, Richmond, Fredericksburg & Potomac, Virginian, and Washington Southern, are also within the eastern group. Had these lines been excluded, the eastern group lines as a whole would have needed to have their freight and switching revenue increased 30.586 per cent to produce a net return of 6 per cent on their property investment and, statistically, as the Pocahontas lines needed their freight and switching revenues increased by 15.729 per cent, they gained $18,598,901 by being in the eastern group. On the adjustment proposed by the complainants the Virginian Railway would contribute $152,398, although, by its inclusion in the eastern group, it theoretically lost $1,981,168. The statistics of the so-called Allegheny region lines, i. e., Baltimore & Ohio, Bessemer & Lake Erie, Central of New Jersey, Pennsylvania, lines east, Philadelphia & Reading, Western Maryland, Buffalo & Susquehanna, and Staten Island Rapid Transit, so presented in Ex Parte 74 indicated a need for increases in their freight and switching revenues of 36.126 per cent. The application to them of the common percentage of the eastern group resulted in a theoretical loss to the Allegheny region lines of $36,244,058.

The data upon which the complainants contend they lost and the

*The New York, Ontario & Western is controlled by the New Haven through the ownership of a majority of its stock.

defendant eastern trunk line and central territory carriers gained 1.48 per cent of the total freight and switching revenues were incomplete. The complete figures presented to us in Ex Parte 74 indicate that the revenue needs, excluding amounts to be raised from passenger-train service, passenger revenue, excess baggage, Pullman surcharge, and milk, were for all roads in the eastern group 39.75 per cent
87 of the total freight and switching revenue, while the revenue needs, including the revenues from passenger-train service, for the defendants was then 38.55 per cent of their freight and switching revenue, a difference of 1.2 per cent of the total freight and switching revenues, or $20,377,678, approximately $4,000,000 less than the amount claimed by the complainants. If the Pocahontas lines had been excluded from the eastern group the remainder of the lines in the group would have needed their freight and switching revenues increased 40.95 per cent, or 1.2 per cent more than the group as a whole required. In other words, what the complainants lost theoretically the Pocahontas roads gained. The complainants are located in the northern part of the eastern group and the Pocahontas lines in the western part. They do not directly connect, and the amount of tonnage participated in under joint rates to or from New England is negligible. This fact is significant only in that it suggests that there is not necessarily a relation between the prayer of the complainants for increased divisions and their claim for adjustment of earnings due to their inclusion in the eastern group. The amounts by which the lines west of the Hudson River are alleged to have benefitted by the inclusion of the New England lines in the eastern group bear no relation to the traffic which they interchange with the complainants.

It is contended for defendants, however, even assuming that the theory of complainants has merit, that the total of $24,464,860 should not be assigned to the interchange traffic alone, but should be apportioned among the various classes of traffic, as follows: Local,
88 $3,701,533, or 15.13 per cent; interline New England, $2,358,413, or 9.64 per cent; interline Canadian, $1,091,133, or 4.46 per cent; New England passenger, $8,335,178, or 34.07 per cent; and interline trunk line, $6,329,059, or 25.87 per cent; Boston & Albany, $2,649,544, or 10.83 per cent. It is defendants' view that, if there is any merit in complainants' contention that their inclusion in the eastern group benefited the other carriers in that group, the extent of the alleged benefit should be measured by the total per cent of the deficiency to total operating revenues and not by the per cent of the deficiency to freight revenues. Thus measured the inclusion of the complainants' lines increased the needs of the carriers in the eastern group from 32.71 per cent to 33.28 per cent of the total operating revenues, a difference of 0.57 per cent. The total operating revenues of the carriers in the eastern group for the constructive year ended October 31, 1919, were $2,585,316,615, of which 0.57 per cent is $13,488,748, and defendants assert that this amount represents the theoretical benefit rather than 1.48 per cent of the freight and switching revenues, or $24,484,860, as stated by the complainants.

Based on their needs when application was made in Ex Parte 74,

and disregarding the downward trend of traffic and revenues since that time, 21 carriers in the eastern group may earn more than 6 per cent on their property investment because the required percentage increases of their freight and switching revenues were less than the required percentage of the eastern group as a whole. The amount of their contribution to the 1.48 per cent would be $11,337.717. However, under the provisions of paragraph (6) of section 15*a* of the interstate commerce act, if any carrier receives for any
89 year a net railway operating income in excess of 6 per cent of the value of the railway property held for and used by it in the service of transportation, one-half of such excess is recoverable by the Commission for the purpose of establishing and maintaining a general railroad contingent fund. Hence 50 per cent of the return in excess of 6 per cent, if earned, would not be available in any adjustment with the complainants covering the past, although it would be available for the future.

In their original applications in Ex Parte 74 the carriers proposed general percentage increases in freight rates in the eastern group of 30 per cent. After the wage award they filed an amended application. We estimated, based on the data furnished by the labor board, that the wage award would be equivalent to 12.2 per cent of the total railway operating revenues of the eastern group carriers. We approved increases in the eastern group of 40 per cent for freight service, including switching and special services; 20 per cent in passenger fares, excess-baggage charges, and rates on milk and cream; and authorized a surcharge upon passengers in sleeping and parlor cars of 50 per cent of the charge for space in such cars, such charge to accrue to the rail carriers. Joint or single line through rates between points in one group and points in other groups were permitted to be increased 33⅓ per cent.

The increases on freight traffic for the roads in the eastern group did not average 40 per cent. Complainants estimate that they actually received or will receive 37 per cent increase instead of 40 per cent. Principally because of the interterritorial percentage having been made 33⅓ per cent, the refusal of certain states to
90 permit increases in intrastate rates equal to those we authorized for interstate traffic, and the continuance of fixed differentials, it is estimated that the increases for roads in the eastern group other than the complainants will be freight, 36.06, and passenger, 18.08 per cent. The acquiescence of the New England lines in being treated as a part of the eastern group and in receiving no more than the uniform percentage increases for the group as a whole was undoubtedly due to the fear on their part and on the part of the shippers in New England that a larger increase of rates, corresponding to financial needs, in New England than in the remainder of the eastern group would injure industry and traffic. The complainants and the defendants may be said to have been joint participants in a common undertaking, i. e., to have their rates increased uniformly. Prescribing rates as a whole in rate groups necessarily means that the return will not be the same for each carrier. Complainants admit that the eastern trunk line and central

territory carriers can not be legally required to transfer directly to them an equalizing amount, but claim that this may be accomplished indirectly through a change in the divisions of joint rates.

Complainants particularly emphasize another of the statutory considerations for the determination of just, reasonable, and equitable divisions: They are either originating or delivering carriers in respect of the largest percentage of their traffic. For example, it is stated that 93 per cent of the traffic of the New Haven begins or ends on its line. Advance in transportation has been more marked in train service than in terminal services, or the latter has
91 not kept pace with the former. Complainants contend that New England, particularly the dense manufacturing sections of Connecticut, Rhode Island, Massachusetts, and southern New Hampshire, containing 3,400,000 people, or 3.25 per cent of the population of the United States, is in effect a large terminal or railroad yard, and much of their evidence is directed to demonstrate the relatively high costs inherent in that condition. They assert that they suffer a double disadvantage; heavier terminal expense than their connections, which must be borne from the revenues received from relatively short hauls, and, in addition, several of the complainants have no well-defined main lines, those of the New Haven, Boston & Maine, and Maine Central constituting 11.5, 8.12, and 244.67 per cent, respectively, of the total mileage operated. The main lines of the New Haven are bisected at frequent intervals by cross lines of traffic importance; there are many secondary lines, and numerous branch lines. The lines of the Boston & Maine radiate from Boston like the spokes of a wheel, and are interlaced at various points by secondary lines. These characteristics mean, it is said, an unusually high density of stations, yards, junction points, and locomotive terminals; relatively short hauls for freight, and, because of the scattered manufacturing cities and towns, a large amount of "dropping and picking up" of cars, a large number of switching classifications in yards, a heavy detention of freight cars, and a low ton-mile productivity of equipment and labor, effecting high operating costs and high investment per unit of traffic.

Based on property investment figures submitted in Ex
92 Parte 74 of $833,583,558 for New England lines, other than the Canadian Pacific lines in Maine and the Boston & Albany, and of $8,327,377,457 for the eastern trunk and central territory lines, it is shown that these investments are, respectively, $109,480 and $145,026 per mile of road. The investment per mile of road for the New England lines is 75.5 per cent of that for the eastern trunk and central territory lines. Based on a separation of operating expenses between freight and passenger train service, however, it is shown that the freight proportion of operating expenses was 63.03 per cent for these New England roads and 76.27 per cent for those in the eastern trunk line and central territories, making the freight service proportion of the property investment, based on operating expenses per mile of road, $69,006 for these New England roads and $110,611 for the eastern trunk line and central territory roads. The revenue ton-miles of these New England carriers for the

calendar year 1919 were 37.6 per cent per mile of road of the revenue ton-miles of the eastern trunk line and central territory carriers, and the property investment per 1,000,000 revenue ton-miles per year was, per mile of road: New England, $58,005; eastern trunk line and central territory, $34,958; the former being 165.9 per cent of the latter, the result, it is said, of the lower density of traffic, the greater density of terminals, and the shorter haul. On this basis, the net operating income must assume a 66 per cent greater carrying charge per ton-mile for these New England roads than for eastern trunk line and central territory carriers. This is a rough average and admittedly an indicative approximation only.

93 The major operating handicaps, interrelated and overlapping each other, of the complainants in comparison with operations, in eastern trunk line and central territories, each of which is said to embrace factors largely beyond the control of the complainants, may be summarized under four general headings: (*a*) diversity of routes and diffusion of traffic, (*b*) low freight traffic density, (*c*) terminal characteristics, and (*d*) short hauls.

Diversity of Routes and Diffusion of Traffic.

The large number of junction points on the New Haven and the Boston & Maine has been referred to. In further reference to the diffusion of traffic it is shown that 70 per cent of the tonnage of the New Haven originates or terminates at 53 stations out of about 550 stations on that road. Of the 53 stations, 16 are located on the main line, 10 on three branch lines, 8 on a group of branch lines in Massachusetts between Fitchburg and Lowell and between Fall River and New Bedford, and 19 are widely scattered. A study of the car movement through Harlem River, N. Y., and Maybrook, N. Y., for one month shows that of 54,000 cars from eastern trunk line territory, 36,000 moved via the first and 18,000 via the second gateway. Of the cars which moved by way of Harlem River and New Haven, 5.1 per cent were delivered between Harlem River and Bridgeport, 20.8 per cent were delivered at or diverted from the main line at Bridgeport, Conn., 51 miles from the Harlem River for movement to Waterbury, Conn., and 10 other districts in that territory; 35.5 per cent were delivered at New Haven or diverted from the main line to Hartford, Springfield, and 14 other stations; 5.9 per

94 cent were delivered at New London, Conn., or diverted north to Worcester, Mass., and to branch-line points; 8.8 per cent were delivered at Providence, R. I., or diverted by way of a large number of branches to 15 different stations; 7.7 per cent were delivered at Attleboro, Mass., or diverted to Taunton and South Braintree and thence; and 1.6 per cent were delivered at Mansfield, Mass., or diverted. Only 12.9 per cent moved through to Boston. The above statement does not comprise cars moving less than 50 miles. Analysis of the movement through Maybrook developed a similar result, only 6.4 per cent of the cars moving through to Boston. It should be noted, however, that it is unusual for a carrier receiving a volume of traffic at one end of its line to carry most of it through

to the farthest point on its line. Of the 54,000 cars, 41.5 per cent moved less than 150 miles and received three terminal handlings. In October, 1920, the Maine Central received 3,010 loaded cars via its principal junctions for 431 destinations, nearly 50 per cent of which were handled less than 100 miles. An analysis of the freight-train service for one day, May 26, 1920, on the Boston & Maine shows that in fast-freight service 63.8 per cent of the cars were handled through from the originating terminal to the end of the run; in slow-freight service 56.9 per cent, and in local and mixed trains 24.8 per cent were so handled. The wages of the train crews in these respective services were 68 cents, 88 cents, and $4.27 per train-mile.

95

Low Freight Traffic Density.

The ton-miles of revenue freight per mile of road for eight New England roads, the complainants and the Grand Trunk in New England, for the calendar year 1918, were 1,226,084, while the similar ton-miles for eastern trunk line and central territory carriers were 3,638,058 ton-mile of revenue freight per mile of road; the highest, the Central New England, 1,788,786 ton-miles. The density of traffic on the lines of other lines with which complainants interchange traffic is shown below in a statement of ton-miles of revenue freight per mile of road.

Carrier.	Ton-miles.
Delaware & Hudson	4,465,736
Delaware, Lackawanna & Western	5,836,909
Erie	4,482,310
Lehigh & Hudson	3,940,583
Lehigh & New England	99,838
Lehigh Valley	4,800,895
New York Central	4,221,915
Boston & Albany	3,946,202
New York, Ontario & Western	1,362,691
Central of New Jersey	4,362,065
Long Island	344,996
Pennsylvania, lines east	5,544,551
Pennsylvania, lines west	5,177,751

This indicates a relative low traffic density on the lines of the complainants.

Terminal Characteristics.

The terminal condition of the New England lines which makes for high operating costs, notwithstanding that relatively the degree of improvement in units of operating efficiency has been at least as great in New England as in other parts of eastern territory, has been noted generally. The ratio of expenditures in New
96 England for maintenance of way during the period of federal control was but slightly higher than in other parts of eastern

territory; that for maintenance of equipment was lower in New England than elsewhere in eastern territory, possibly due to a lesser number of cars. The operating ratio for the complainants and the Grand Trunk in New England was 91.9 per cent; for eastern trunk and central lines, 87.6 per cent. During the test period the operating ratio for the complainants averaged 69.8 per cent; for eastern trunk and central territory lines, 69.5 per cent, so that the percentage of increase during the period of federal control over the test period was greater in New England than in eastern trunk line and central territories.

The following statement contrasts the ratio to total operating revenue of direct cost to complainants and to certain eastern lines of conducting transportation during the federal control period:

Carrier.	Ratio.	Carrier.	Ratio.
Bangor & Aroostook	40.8	Lehigh & New England	34.7
New Haven	48.2	New York Central	41.3
Rutland	49.1	Delaware, Lackawanna & Western	43.1
Central New England	49.2	Lehigh & Hudson River	43.6
Boston & Maine	54.1	Pennsylvania lines west	44.2
Maine Central	55.9	Pennsylvania lines east	45.6
Central Vermont	61.3	Delaware & Hudson	47
		Lehigh Valley	47.1
		Central of New Jersey	46.6
		New York, Ontario & Western	48
		Long Island	48.9
		Erie, including Chicago & Erie	50.6
		Boston & Albany	52.4

Conducting transportation embraces the direct costs incurred in the production of transportation. Relatively, the direct costs to the New Haven were but slightly more than those of the Delaware & Hudson, the Lehigh Valley, the New York, Ontario & Western, and less than those of the Long Island and the Erie, including
97 the Chicago & Erie, or the Boston & Albany. On the contrary, the Central Vermont, with a well-defined main line from New London, Conn., to St. Johns, Canada, and comparatively few branches and junction points, has the highest ratio of any of the complainants or of the defendants shown. This, possibly, may be due to adverse weather conditions, but, on the other hand, the Bangor & Aroostook, the northernmost railroad in continental United States, subjected to a usual snowfall of 11 feet per year, of all the complainants has the lowest ratio. The variances in the ratios among the complainants are suggestive that an average for all of the complainants does not accurately portray the situation of individual carriers. Extreme weather conditions in Michigan also handicap the Michigan carriers and the Ann Arbor and Pere Marquette, operating car ferries across Lake Michigan, are subjected to heavy expense, which they must meet from competitive rates applicable via Chicago, Ill., to the northwest.

No comprehensive data were available on freight density. A special study indicates that the Boston & Maine and the New Haven have on freight station for every 3.87 miles of road; the New York

Central, the Erie, the Baltimore & Ohio, and the Pennsylvania, one for every 4.3 miles of road. In New England there is an agency station for each 4.1 miles of rail line; the Pennsylvania has one for every 5.8 miles. For the calendar year 1919 the average carload in New England was 23.5 tons; for the eastern trunk and central territory lines, 30.3 tons. The car-miles per car-day in the same year were 16.1 in New England; 21.9 miles in eastern trunk line
98 and central territories. The per cent of loaded to total car-miles was 72 in New England and 67.7 in the other territories. These factors afford the resultant of freight-car utilization expressed in net ton-miles per car-day; 73 in New England and 449 in eastern trunk and central territories. Either the New England utilization of freight cars was only 61 per cent of that of the trunk and central territory lines or the latter were able to produce 64 per cent more ton-miles per car-day than the New England roads named. The average train speed in New England for fast, slow, and local freight was 10.5 miles per hour; for trunk and central territory lines, 9.9 miles per hour. The average trainload was 74 per cent greater in eastern trunk line and central territories than in New England. The New England lines produced only 55.9 per cent of the net ton-miles per locomotive-day produced by lines in trunk line and central territories.

An indication of the relativity of station expenses is limited to a comparison of the Boston & Maine and the New Haven, on the one side, with the Baltimore & Ohio, the Pennsylvania, and the Erie on the other side. The average for the two complainants was $1.45 per 1,000 ton-miles; for the named trunk lines, 47 cents.

The freight-yard costs per 1,000 net ton-miles as exhibited by the complainants, individually and relatively, are shown by the following statement:

Carriers.	Yard costs.
Bangor & Aroostook	$0.62
Boston & Maine	1.511
Central New England	.882
Central Vermont	1.309
Grand Trunk	1.091
Maine Central	1.085
New Haven	1.859
Rutland	.988
Average	1.494
Average trunk and central territory	.961

99 The cost in New England, on the average, is a reflex of traffic and operating characteristics.

There is comparatively little difference in the cost per freight-train mile, either for wages or totally, between New England and trunk line and central territories, but the cost per 1,000 net ton-miles is materially different, as shown herewith:

Carriers.	Wages.	Total.
	Cents.	Cents.
Bangor & Aroostook	145.9	496.6
Boston & Maine	125.9	389.6
Central New England	106.5	341.4
Central Vermont	133.9	506
Grand Trunk	72.5	326
Maine Central	129.6	412.8
New Haven	126	358
Rutland	119.6	354.2
Total	124.1	381.9
Total trunk and central territory	67.4	216.1
Per cent	184.1	176.7

Notwithstanding these statements, which appear to make for high operating costs, defendants show that the total operating revenues of the complainants and the Boston & Albany were $243,043,443 and their total operating expenses $245,941,273, an operating ratio of 101.19 per cent, whereas, for the same period, the first 10 months of 1920, the total operating revenues of the trunk lines were $1,563,-921,212; their operating expenses $1,576,738,056; an operating ratio of 100.24 per cent. The central territory lines' operating ratio for the same period was 92.97 per cent; the grand-total average for the eastern district, 98.68 per cent.

The average receipts per ton for the New England lines for a constructive year ended October 31, 1919, were $1.525; for the trunk lines, $1.287. The average receipts per ton-mile, for the same year, for the New England lines, were 1.36 cents; for the trunk lines, 0.889 cent. The following statement contrasts the average receipts per ton-mile of the complainants and their direct western connections for the calendar year 1919:

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Carrier.	Average receipts.	Carrier.	Average receipts.
	Cents.		Cents.
Bangor & Aroostook	1.723	Pennsylvania lines east	.886
Boston & Maine	1.315	Lehigh Valley	.893
Central New England	1.106	New York, Ontario & Western	1.062
Central Vermont	1.478	*Central* of New Jersey	1.32
Maine Central	1.257	Delaware, Lackawanna & Western	1.074
New Haven	1.557	Long Island	4.912
Rutland	1.205	Lehigh & New England	1.489
		Erie	0.818
		Delaware & Hudson	.835
		New York Central, including Boston & Albany	.873

The Long Island carries relatively little freight and is largely a suburban passenger road.

Although complainants have sought to show that they are essentially terminal carriers, the ratio of switch tracks to total tracks operated December 31, 1919, and the switching locomotive mileage to the total locomotive mileage for the calendar year 1919 shows that the New England lines, including the Boston & Albany, had an average ratio of switch tracks to all tracks operated of 30.64 per cent; the other eastern roads, 34.63 per cent; and that the ratio of yard-switching locomotive miles to total locomotive-miles performed in the transportation service was 17.78 per cent for the New England lines and 22.01 per cent for the other roads in the eastern district. Complainants explain this by pointing out that more locomotive-miles are necessary in New England in proportion to freight handled than in the territory west of the Hudson, because of the shorter trains made
101 necessary by operating conditions. Compared to the total freight handled they claim that the relative amount of switching in New England is substantially greater.

Cost figures were submitted in an exhibit of the New Haven and the Central New England, based on the 11 months ended May 31, 1919, adjusted by the 40 per cent increase under Ex Parte 74, as follows:

	Per centage of ton-miles.	Revenue per ton-mile.	Per cent revenue to average cost.	Average haul.	Gross revenue.	Per cent of gross revenue.
		Cents.		Miles.		
Interchange	80.7	1.541	92	136.29	$38,440,025	54
Interline New England	6.8	4.371	240	65.32	9,260,800	13
Local	12.5	6.123	330	60.11	23,587,481	33

The average total operating cost and revenue per revenue ton-mile, in cents, and the operating ratios on freight for the two roads combined, for September and October, 1920, were:

	Cost.	Revenue.	Ratio.
	Cents.	Cents.	
September	1.8696	1.9739	94.72
October	1.8824	1.9912	94.54

It is therefore argued that the two complainants combined handled their interchange traffic with 80.7 per cent of their ton-miles at a rate of, roughly, 1.54 cents per ton-mile, whereas the average cost of all their freight traffic was about 23 per cent more. In connection with these figures it is shown that the passenger business of these roads is more nearly remunerative than the freight business. The operating ratios, under formula corresponding to or closely analogous to that prescribed by us, were:

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Period.	Passenger.	Freight.
July, 1916	55	64
First six months of 1920	84	111
September, 1920	81	95
October, 1920	85	95
November, 1920	87	104

From these figures the New Haven and Central New England contend that the conclusion is inevitable that freight as a whole is not remunerative, and that the loss is from 54 per cent of revenue derived from 80.7 per cent of the ton-miles, that is, from the freight interchanged with the trunk lines. This is a comparison of unlike factors. The local traffic is handled by one road; the interline and the interchange traffic are handled by two or more roads; the average haul for the local traffic is the total haul; for the interline and interchange traffic the haul is only that of the New Haven and Central New England combined, and does not include that of the connecting carriers. The character of the traffic is different, raw materials comprising a far greater percentage of the interchange traffic than of the local or interline traffic. The rate bases are different, that in New England being substantially higher than that applicable between New England and trunk line territory, as is illustrated by the fact that the Anderson scale of class rates prescribed locally in Proposed Increases in New England, is not in full effect to the junction points because of the provisions of the fourth section of the act. The ton-miles and the revenues are different. The loading per car is greater in the interchange than in the local traffic, the former for the three months ended June 30, 1920, on the New Haven, having been 31.2 tons per car; the latter, 23 tons; during the same period the traffic originated on the Boston & Maine
103 averaged 20.5 tons per car; that received from its connections, 30.5 tons. The cost is of all freight traffic, not of the interchange traffic. Were all of the figures reduced to a relation to the local traffic, which was moved 60.11 miles, the revenue per ton-mile on the interline would be 71.36 per cent of the revenue per ton-mile on the local traffic and the revenue per ton-mile on the interchange would be 25.71 per cent of the revenue per ton-mile on the local. Assuming that the traffic was of the same character and moved on rates which were as high as the Anderson scale, it is shown that the first-class rate, prior to Ex Parte 74, for a distance of 60.11 miles, 41.5 cents per 100 pounds would yield 13.833 cents per ton-mile, 71.36 per cent of which would be 9.871 cents per ton-mile, the revenue under the Anderson scale for a distance of 91 miles, and 25.71 per cent of which would be 3.566 cents per ton-mile, the revenue from a rate of 74 cents per 100 pounds under the Anderson scale for 444 miles. The haul of interchanged freight beyond the junctions must exceed the difference between 136.29 miles, the average haul of the New Haven and Central New England on interchange traffic, and 444 miles, since it moves throughout the United States. Complainants claim, however, that the lines performing terminal service in connection with a joint haul are fairly entitled to divisions of the joint rates yielding relatively higher earnings per ton-mile than the average earnings for the entire haul.

The cost of locomotive fuel is one of the greatest items of expense in the operation of the New England roads. Complainants estimate that this cost alone increased $25,000,000 in 1920 over the
104 annual cost before the war. In 1919 the complainants paid freight charges on coal of $8,591,915; on other materials and

supplies, $969,670, a total of $9,561,585. Were all the tonnage subject to an increase of 40 per cent in accordance with Ex Parte 74 the total freight charges paid by complainants would be $13,386,219. During the calendar year 1919 the complainants and Grand Trunk in New England consumed 3,630,385 tons of bituminous coal which, at the price which prevailed in September of that year, cost, on an average, $4.95 per ton; lines in eastern trunk line and central territories consumed nearly 40,000,000 tons, which, on the same basis, cost $3.10 per ton. Figured on the prices which prevailed during the eight months' period ended August 31, 1920, the respective costs were $7.35 and $3.79. Coal has always cost more in New England than in coal-producing sections, because of the longer haul from the mines, but complainants' claim is that for this very reason the recent increases in freight rates have caused a disproportionate rise in their fuel cost compared with that of defendants.

What portion of the cost of locomotive fuel is properly chargeable to its transportation is not susceptible of accurate ascertainment from this record. Company freight in 1918 was carried an average of 62 miles in New England and 115 miles in the remainder of the eastern group. Coal mines are not located on the lines of all carriers in the eastern group, and many of them are compelled to purchase coal from mines on other roads; but very few, if any, of them have so long a haul from the mines as the New England roads. It is expected that during the coming year there will be a substantial saving in fuel costs.

105 In certain parts of New England, particularly in sparsely settled sections of western Vermont and in Maine, penetrated by the Bangor & Aroostook, the Rutland, and the Central Vermont, living conditions are said to have been such that the carriers were not compelled to pay the wages which were paid in the more thickly populated manufacturing sections of the other states. The partial standardization during the federal control brought about a disproportionate increase in the wages on these lines. During the three years ended June 30, 1917, herein referred to as the test period, the average annual pay roll of the complainants was $63,800,009; in 1919 it was $129,350,000; and for 1920, estimated, $174,000,000. Based on latest estimate for the complainants, it is indicated that the wage award increased their expenses at the rate of approximately $33,000,000 per annum. For other eastern roads the annual increase was approximately $290,655,100. A comparison of the average daily compensation for the year ended June 30, 1910, between roads operating in New England and those operating immediately west of the Hudson River shows that the compensation for most classes of employees was lower west of the Hudson River in that year than in New England.

Reference has already been made to the relatively large proportion of revenue derived by the carriers in southern New England from passenger traffic. The total revenue of the New Haven is obtained about equally from freight and from passenger traffic, while the New England lines as a whole receive about two-fifths of their

revenue from passenger traffic. The lines west of the Hudson
106 River derive 72 per cent of their revenues from freight traffic; therefore complainants contend that as the general increases permitted by us and by the Director General of Railroads have been mainly applied to freight traffic, and when applied to passenger as well as freight traffic have been greater on freight than on passenger, although their needs were greater than other carriers, they have received the least relief. This necessarily raises the question whether in this divisional case we may consider the "financial needs" of the complainants in all their angles, retroactively and prospectively, and increase the divisions of the complainants on merchandise traffic interchanged with their connections to produce a fair return upon their property held for and used in the service of transportation, although the passenge traffic may in no definite way relate to the service performed by the carriers parties to joint rates which are called upon to divide. The New Haven operating ratios, as we have seen, were:

Period.	Passenger.	Freight.
July, 1916	55	64
First six months of 1920	84	111
September, 1920	81	95
October, 1920	85	95
November, 1920	87	104

Under similar formula the operation ratios for the complainants, for the first six months of 1920, when the New England lines were subjected to severe weather conditions and to strike, show the relative condition as between passenger and freight traffic, as follows:

107	Passenger.	Freight.
Bangor & Arostook	83	105
Maine Central	103	106
Central Vermont	151	115
Boston & Maine	101	109
New Haven	84	111
Central New England	340	109
Rutland	111	114

The principal passenger-carrying roads are the Maine Central, Boston & Maine, and New Haven; the passenger traffic of the Central New England is negligible. On the one hand, the New Haven, the passenger traffic of which is apparently more renumerative than that of any other of the complainants, receives 56 per cent of its revenues on freight traffic which it interchanges, comprising 67 per cent of its total traffic, while the Central New England, on the other hand, receiving 94 per cent of its revenues upon 96 per cent of its tonnage from interchanged freight, has a greatly disproportionate passenger operationg ratio.

Another factor prominently brought to the fore and asserted to be one of the bases upon which we should increase the divisions of the complainants is per diem, or car hire. In Proposed Increases in

New England, supra, the movement of traffic between New England and other sections of the country was shown to be "poorly balanced." "For every three carloads of manufactured products moving west from New England five carloads of raw materials move eastbound into New England." In 1919 the New Haven received 779,491 loaded cars and delivered to its connections 382,487 loaded cars. The cars of other carriers are not returned as fast as they are received. Prior to the adoption of per diem charges in 1902, car hire was on the basis of mileage at the rate of 6 mills per car mile. The
108 initial per diem charge of 20 cents per car per day was based on an average of 33⅓ miles per car per day; New England then was averaging about 15 miles per car per day; hence the New England lines were adversely affected by the substitution of per diem for mileage. Whether or not other eastern lines were averaging materially less than 33⅓ miles per car per day is not disclosed. The charge on November 1, 1920, became $1 per car per day. If the mileage charge had been increased proportionately to the increase in the per diem charge, based on the freight-car days and freight-car mileage in New England in 1919, the mileage charge would have amounted to approximately $17,645,000 less than did the per diem.

In 1918, on the basis of 2,409,688 freight cars reported to the American Railway Association, the average cost per car was $955.61; in 1919, on the basis of 2,680,684 cars reported, $1,032.88; in 1920, based on the actual cost of the cars reported in 1919 plus estimated cost of new cars, $1,066.77. The new equipment, 158,805 cars, cost on an average $3,045.66 per car. On the basis of the average of the actual cost for old cars and estimated increase cost of present maintenance, plus cost of all of the new cars which have been added, including those ordered, the average cost of ownership is about 99.58 cents per car per day.

One of the primary purposes of the per diem arrangement is to increase the use of freight equipment through expediting its movement and avoiding detention. Although the charge is intended to cover the cost of ownership, including maintenance, depreciation, taxes, interest, and other allocations incident to ownership, per diem
109 savors of a penalty. The New Haven was a creditor road to and including the year 1915 and for seven months in 1919. The Boston & Maine reduced the number of its freight cars by 5,379 in the period December 31, 1911, to December 31, 1919. Defendants claim that the New England roads could avoid a debit per diem baalnce by adding to their equipment. Complainants state that they would have purchased more cars if they had been able to do so, but challenge the claim that in this way a debit balance could be avoided. The New Haven met the situation when per diem was established by a liberal purchase of cars and for a time was a creditor road; but this has seldom been the case since 1915. Complainants point out that they receive five loaded cars for every two loaded out, so that they have a surplus of empties. The car service rules forbid them from sending out their own cars empty when, as always, they have foreign empties to return. The result is, they say, that there are more foreign cars on their lines that there are New England cars

on outside lines, except when car shortage is so acute that empties are moved on emergency orders.

The record indicates that per diem has never been a factor specifically taken into account in the determination of divisions. If it were so considered one of the essential purposes of per diem, i. e., greater use of freight equipment, might be nullified. As a road may have a debit balance one month and a credit balance in another, an exceedingly variable factor would be injected into the measure of compensation for the service performed under the joint rates. It was further suggested for defendants that if debit balances for per diem were made a factor in increasing divisions, the incentive to purchase new cars would be gone.

110 The New England woolen mills use in manufacturing approximately 60 per cent of the wool consumed in the United States. New England contains within its borders 28.6 per cent of the cotton-manufacturing establishments of the United States, embracing about 40 per cent of the total capitalization of all such industries and 35.4 per cent of the total number of spindles. These mills use 36 per cent of the raw cotton consumed in this country. New England's production of paper and paper board is about 27 per cent of that of the United States. Maine, New Hampshire, and Massachusetts produced 52.1 per cent of the boots and shoes manufactured in the United States in 1914. Massachusetts produces more leather belting, boot and shoe cut stock, rubber boots and shoes, envelopes, motor bicycles, and parts than any other state. Connecticut ranked first of all states in the production of clocks, cutlery, edged tools, and hardware. But no coal is produced in New England. It has no cement mills; and only one iron mine and four small blast furnaces. It produces only 4.4 per cent of the number and 5.7 per cent of the brick of the United States. On the other hand, the states comprised in eastern trunk lines and central territories produce 81 per cent of the bituminous and anthracite coal, 87.9 per cent of the pig iron, 12.6 per cent of the lumber, 55 per cent of the cement, and 69.4 per cent of the brick produced in this country, while 82 per cent of the blast furnaces are located within their borders. These commodities, which New England lacks, move in volume in the states west of the Hudson River and are generally considered to be the mainstay of the carriers which transport them. A percentage comparison of the freight tonnage of New England and other eastern car-

111 riers shows that New England has large percentages of the products of agriculture, animals, forests, manufactures, commodities carried at miscellaneous carload rates, and less-than-carload traffic than have the other eastern roads, but the products of mines originating on New England lines constitute only 17.34 per cent of their total traffic as compared with 60.31 per cent on the lines of the other eastern carriers. These facts, of course, have a most important bearing in a rate case, but our function in a divisional case has been considered to be an equitable, just, and reasonable apportionment of earnings derived from the carriage of a particular commodity as between the carriers participating in its transportation and the fact, for example that a coal-carrying road has derived its principal revenue

therefrom has not operated to decrease the divisions it received for the carriage of merchandise traffic. And, manifestly, if a particular traffic must bear its proper and proportionate share of operating costs and may only earn its due proportion of the total earnings of a particular carrier, it would be inequitable to increase the divisions of a carrier having a large percentage of less-than-carload traffic because another carrier with which it participated in the transportation of such traffic received the major portion of its earnings from coal or some other commodity moving in greater volu-e.

Shorthaul less-than-carload traffic is generally conceded to be, in the main, unremunerative. All of that interchanged between complainants and defendants, the percentage of which to the total tonnage interchanged does not appear, although it comprises 13.92 per cent of the total tonnage of complainants as contrasted with
112 3.78 per cent of the total tonnage of the other roads in the eastern group, must be distributed by the complainants when it originates in territory other than New England, and, conversely, all the interchanged lessthan-carload traffic originated by the complainants must be distributed by the defendants. It must be transferred and handled at intermediate points, and, except in respect of that transported intact in through cars, the load decreases as the haul increases. It is impossible on the record to separate the less-than-carload traffic interchanged between the complainants and the defendants from the total tonnage interchanged, nor can we say that, because it is stated that complainants originate a larger percentage of less than car-load traffic than is originated by the defendants, that fact should be given weight in determining that the divisions of the complainants "as a whole" are unjust.

Defendants point to the fact that the complainants compute their average haul of revenue freight by showing the total number of tons of revenue freight as 87,501,565 for the calendar year 1918. In another connection they show the freight interchanged with trunk line and Canadian roads, interchanged interline New England and local to each New England road for the six alternate months December, 1918, to October, 1919, converted into a constructive year on the basis which the freight revenues bore to the total freight revenues for the year ended October 31, 1919, as 853,854,253 tons, of which 9.6 per cent was interline in New England. This is unduplicated tonnage, but it is apparent that a consideration volume of tonnage must have had a two-or-more line haul or was so-called passing-over traffic for the compl-inants and as to which they were intermediate carriers.

113 The freight traffic interchanged between the lines of the complainants and the trunk and Canadian lines, defendants herein, for a constructive year ended October 31, 1919, was 34,099,720 tons—merchandise, 20,095,420 tons; coal, 14,004,300 tons. The total freight tonnage of the complainants for the same year was 53,854,253 tons—merchandise, 38,300,990 tons; coal, 15,553,263 tons. The interline New England merchandise tonnage was 5,087,025 tons; coal, 100,853 tons. The local merchandise was 13,118,545 tons; coal, 1,448,110 tons. The tonnage interchanged with the trunk

and Canadian lines originated or terminated on the lines of the complainants in the following amounts:

	Tons.	Revenue.
New Haven	16,812,988	$28,068,510
Boston & Maine	11,635,278	23,860,503
Maine Central	2,127,238	4,066,037
General Vermont	1,149,744	3,129,674
Central New England	1,068,712	5,700,698
Rutland	873,187	1,567,373
Bangor & Aroostook	432,573	879,853
Total	34,099,720	*$67,272,648

Tonnage was interchanged with complainants' direct connections in the following amounts:

Direct connecting carrier.	Merchandise other than coal. Tons.	Coal. Tons.
Canadian Pacific	1,743,651	35,978
Central of New Jersey	1,651,994	2,311,261
Delaware & Hudson	2,699,901	3,479,360
Delaware, Lackawanna & Western	547,967	17,002
Erie	847,136	531,554
Grand Trunk	1,897,152	.....
Lehigh & New England	124,390	414,584
Lehigh Valley	745,515	824,219
Long Island	252,990	.....
New York Central, including Boston & Albany	5,906,599	2,521,257
New York, Ontario & Western	64,225	465,693
Pennsylvania	3,279,654	3,403,140
Other trunk and Canadian lines	181,793	252
Total	20,095,420	14,004,300

114 This tonnage and revenue were divided among the complainants in the following percentages:

	Per cent tonnage.	Per cent revenue.
New Haven	67	56
Boston & Maine	59	54
Maine Central	37	36
Central Vermont	71	65
Central New England	96	94
Rutland	78	67
Bangor & Aroostook	27	23
Average	64	55

* Based on rates in effect prior to Ex Parte 74.

The following statement of the freight traffic interchanged between New England and all other territories for a constructive year ended October 31, 1919, shows the percentage of the total tonnage interchanged between each territory and what percentage of the total revenues thereon the carriers of each territory received:

		Percentage of total revenue			
	Tonnage, percentage of.	New England.	Trunk line.	Central freight.	Other carriers participating.
Eastern trunk	61	46.6	53.2	0	0.2
Central	27	34.5	33	27	5.5
Western	3.7	20	10	15	55
Canadian	3	35.5	1.5	1	62
Southern	2.8	21	25.5	3.5	50
Transcontinental	2.5	7.5	7	12.5	73

On 88.4 per cent of the tonnage which was interchanged between New England and eastern trunk line and central territories the complainants received 42.3 per cent of the total revenue. This tonnage is divided among complainants' connections in percentages as follows:

Road.	Tonnage.	Revenues accruing to all lines west of New England.
Central of New Jersey	11.6	6.5
Delaware & Hudson	18.1	14.8
Delaware, Lackawanna & Western	1.6	2.8
Erie	4.	6.2
Lehigh & New England	1.6	.6
Lehigh Valley	4.6	3.2
Long Island	.7	.2
New York Central (including B. & A.)	25.	31.8
New York, Ontario & Western	1.6	.6
Pennsylvania	19.6	17.3

115 The remaining 11.6 per cent of this tonnage was interchanged with Canadian roads, which received 14.9 per cent of the revenue thereon.

There is no specific statement that all of the tonnage interchanged moved at joint rates. It is shown that about 60 per cent of that interchanged between the Bangor & Aroostook and its connections moved under joint rates, and a considerable portion of that of the Maine Central moved under combinations upon Maine junctions.

The percentages the complainants, the trunk lines, and the central territory lines received of the total through revenue, 35.1, 35.7, and 9.6 per cent, respectively, may be considered in connection with

the haul. For the calendar year 1918 the average haul of revenue freight was: for complainants, 100.6 miles; for the eastern trunk and central territory lines, 153.39 miles. Including the Canadian Pacific and the Grand Trunk, the average haul in New England is increased to 112.19 miles, and by including carriers other than those used in reaching the average haul of 153.39 miles the average haul of revenue freight of the trunk and central territory lines is decreased to 144.77 miles. The average haul of the New Haven for the 11 months ended May 31, 1919, was: local, 60.11 miles; interline, 65.32 miles; interchange, 136.29 miles. The average hauls of the Central of New Jersey, Delaware, Lackawanna & Western, Lehigh & New England, and the New York, Ontario & Western, on traffic destined to points on the New Haven which they originated on May 26, 1920, when a study was made, were less than that of the New Haven. Other than those lines, the average haul of the New Haven on traffic interchanged with its connections which either originated or
116 terminated on that road was less than that of any road embraced in the study.

The merchandise freight was interchanged between the complainants and the direct connecting lines shown via the junctions named in the following statement, which also shows the revenue received by the complainants and by all other lines participating in the transportation. Figures are for the constructive year ended October 31, 1919.

Junction.	Direct connecting carriers.	Tons.	Revenue of complainants.	Revenue of all other lines.
New Haven via:				
Harlem River	Penn., C. N. J., L. V., L. I.	4,217,598	$11,692,296	$18,185,245
Communipaw	C. N. J., L. V.	908,756	2,836,837	2,168,008
Fresh Pond Junction	L. I.	190,147	731,786	186,355
Central New England:				
Maybrook	Erie, L. & H., N. Y. O. & W.	993,996	2,351,661	6,839,044
Beacon	N. Y. Co.	220,693	220,034	240,151
Campbell Hall	N. Y. C., L. & N. E., N. W. O. & W.	42,602	111,548	146,592
Central New England (Lehigh & Hudson):				
Easton	C. N. J., L. V., D. L. & W., Pa.	575,615	1,315,858	1,927,471
Port Morris	D. L. & W.	545,214	1,336,256	3,460,449
Phillipsburg	Penn.	26,263	57,714	110,021
Central New England (Lehigh & New England):				
Belvidere	C. N. J., L. V.	12,605	14,986	44,829
Boston & Maine:				
Rotterdam Junction	N. Y. C.	2,235,315	5,114,293	14,607,390
Mechanicville	D. & H.	2,118,456	4,514,616	9,511,093
Newport	C. P.	803,747	2,265,699	6,276,215
Troy	D. & H., N. Y. C.	331,036	918,609	805,026
Sherbrooke	G. T.	318,985	759,131	835,097
Lennoxville	C. P., G. T.	65,896	113,101	162,444

Junction.	Direct connecting carriers.	Tons.	Revenue of complainants.	Revenue of all other lines.
Maine Central:				
Vanceboro	C. P.	906,523	1,836,360	1,297,854
North Stratford	G. T.	150,441	277,813	808,312
Mechanic Falls	G. T.	129,653	142,425	499,093
Portland	G. T.	80,577	192,606	235,814
Milltown	C. P.	69,413	30,881	98,597
Mattamkeag	C. P.	48,204	63,496	43,267
Danville Junction	G. T.	36,357	76,425	213,820
Warmouth Junction	G. T.	27,198	51,006	160,695
Central Vermont:				
St. Johns	G. T.	1,210,241	3,314,986	8,259,014
St. Lambert	G. T., Q. M. & So.	48,337	79,095	122,632
Farnham	C. P.	18,089	31,243	94,643
Central Vermont and Rutland:				
Rouses Point	D. & H., G. T.	83,454	126,729	242,129
Rutland:				
Norwood	N. Y. C.	354,219	903,216	1,455,470
Chatham	N. Y. C.	112,361	295,723	398,880
Rutland	D. & H.	75,315	124,985	255,330
Noyan Junction	G. T., Q. M. & So.	55,723	153,893	142,587
Bangor & Aroostook:				
St. Leonards	C. N.	106,949	251,010	108,416
Brownville Junction	C. P.	32,230	69,502	201,850

117 In addition to the foregoing, 205,422 tons of merchandise freight moved via other junctions where the tonnage interchanged was light. The revenues of the complainants thereon was $362,213; that of all other lines, $436,151. Freight amounting to 5,456,320 tons moved to or from Boston & Albany points and points west of the Hudson River, of which 3,037,790 tons consisted of traffic to and from points west of the Hudson River via Boston & Albany junctions from and to points on other New England lines. The revenue of the complainants thereon was $5,215,836; that of all other lines, $18,444,554.

The coal was interchanged principally at the junctions shown in the following statement, which also shows the amounts of revenue received thereon by the complainants and by all other lines:

Junction.	Tons.	Revenue received by complainants.	Revenue received by all other lines.
Easton, Pa.	2,895,945	$4,031,606	$4,757,317
Harlem River, N. Y.	3,416,007	4,076,584	6,003,595
Maybrook, N. Y.	1,400,908	2,044,121	2,134,614
Mechanicville, N. Y.	3,235,990	4,994,963	6,106,553
Rotterdam Junction, N. Y.	1,633,038	2,797,801	2,994,103
Boston & Albany junctions	433,388	299,759	1,103,723
All other junctions	989,024	1,073,943	2,108,864
Total	14,004,300	19,318,780	25,208,769

Upon the merchandise tonnage of 18,205,570 tons, transported interline and locally in New England, 33.8 per cent of their total tonnage, complainants received 43.6 per cent of their total revenues.

If the revenues shown of all the carriers were increased 40 per cent and $25,000,000 deducted from the proportions to accrue to the eastern trunk line and central territory carriers, and added to the proportion to accrue to the complainants, the New England lines would receive 44.45 per cent of the total revenue; the trunk lines
118 29.32 per cent; lines in central territory 6.69 per cent; and the other lines 19.54 per cent. If complainants have no means of obtaining increased revenues save from the traffic which is interchanged with their connections and must have their revenue needs met from increased divisions upon this traffic, it is obvious, since a forecast for the year ending August 31, 1921, indicates they may fail by at least $27,000,000 to meet their fixed charges, that the revenues they should receive from such traffic would be more than doubled.

Divisional Arrangements.

Divisional arrangements between the complainants and the defendants apportion the revenues derived from myriads of rates,

Complainants have not essayed to be exhaustive in their presentation, having shown about 3,000 rates intended to typify and illustrate the present arrangements from points on all of their lines, except those of the Bangor & Aroostook. The points selected were Poughkeepsie and Johnsonville, N. Y.; Stamford, Hartford, and Winsted, Conn.; Concord and North Conway, N. H.; Boston, Springfield, Fitchburg, Haverhill, New Bedford, Greenfield, and Fall River, Mass.; Westerly, R. I.; and Portland, Me., on the Boston & Maine and New Haven; St. Albans, Montpelier, and Sharon, Vt.; Palmer and Willimantic, Mass., on the Central Vermont; Swanton, Burlington, and Bellows Falls, Vt., on the Rutland; and Lewiston, Rockland, Bangor, Rumford Falls, and Machias, Me., on the Maine Central. Such trunk line points as New York, Syracuse, Utica, Rochester, Binghamton, and Buffalo, N. Y.; Newark, N. J.; Philadelphia, Scranton,
119 Altoona, Sayre, Harrisburg, and Pittsburgh, Pa.; central territory points such as Youngstown, Cleveland, and Cincinnati, Ohio; Indianapolis, Ind.; Grand Rapids and Detroit, Mich.; Chicago and Cairo, Ill.; and Louisville, Ky.; southern points such as Atlanta and Savannah, Ga.; Nashville and Memphis, Tenn.; Birmingham, Ala.; Jacksonville, Fla.; and New Orleans; and Pacific coast points such as Portland, Oreg.; Spokane and Seattle, Wash.; Los Angeles and San Francisco, Calif., were also selected.

The history of the majority of the divisions is unknown; many of them were established prior to the time when witnesses entered the service of the complainants. Joint rates between the New Haven or its predecessor, operating from New York to Springfield, Mass., and the Pennsylvania north of Washington, D. C., were established in the early seventies; the present divisions between those roads were established in 1880. The most recently established divisions appear to have been those between the New Haven and New York Central on traffic via the Boston & Albany. In some instances the junction points via which the divisions applied have been changed, notably from Harlem River to Maybrook and Campbell Hall, N. Y. The divisions of the New Haven on traffic from points on its lines to points in central territory on the lines of the New York Central were revised and increased in 1906. Some of the roads which now form parts of the systems of the Boston & Maine and the New Haven were comparatively short lines, each of which had its preferred routes and bases of divisions. The evidences clearly indicates that the
120 whole division blocking, which the Boston & Maine and New Haven witnesses denominate as "absurd," illogical," and "a mess of inconsistencies," was pieced together without system; the divisions are inheritances. For example, between points on the New Haven-Central New England and lateral lines and points on the Pennsylvania, Lehigh Valley, Central of New Jersay, Philadelphia & Reading, Baltimore & Ohio, and Delaware, Lackawanna & Western, the Boston block runs from Boston almost to New London, Conn., on the south, to Worcester and Springfield, Mass., on the west; is intersected by the Provincetown block, which applies at Walpole and Medfield Junction, and extends north to Fitchburg and Lowell, Mass.; by the Pascoag block, which applied from Dike street,

Providence, R. I., and Harrisville, from which the Boston per cents plus 4.2 cents per 100 pounds apply, and jumps across the Hartford block, extending from Harlem River, via New Haven, Saybrook Junction and New London, Conn., on the south, north to Springfield, and across the Westfield block, extending north from near by New Haven to Turners Falls and Shelburne Junction, Mass., to the western portion of Connecticut and Massachusetts, applying from New Britain, Conn., south almost to Naugatuck and Bridgeport, and south of South Norwalk, Conn. It also applies west from Fishkill Landing, Rhinecliff, Canan, Vandeusenville, and State Line, N. Y., and Pittsfield, Mass. A small portion of the Hartford block is west thereof. The foregoing statement is vaguely illustrative of the large areas embraced and the absolute lack of consistency in the present blocking. Complainants do not seek to justify, but frankly
121 condemn it; they have merely taken what the small lines had and have allowed such pieces to remain without change or material revision to remedy the long-existing condition. While there may be some portions of the present framework which could be retained, complainants' traffic witnesses concede that the entire structure, if such it may be called, must be rebuilt.

Mileage is a common or general basis of divisions; that of each road being expressed in the percentage it bears to the total mileage involved. This mileage is computed on an actual, constructive, or prorating basis from or to particular points or from or to division blocks. Percentage or mileage divisions are the more numerous. Less commonly, rates are divided arbitrarily or specifically. Specific amounts to particular carriers, generally stated in cents per 100 pounds or other unit, are allowed for terminal and other services, such as for bridge tolls, ferries, and water hauls, the latter generally being on the basis of constructive mileage. These amounts are sometimes deducted before and sometimes after prorating, and accrue to the line performing the service. There are thousands of percentage divisions between the complainants and the defendants, which are multiplied indefinitely by the number of routes over which they apply, and they differ with many circumstances, including competitive conditions. Some rates, particularly those between the eastern group and the southern group, are divided on the basis of specifics. Arbitraries are frequently allowed to an originating road. For example, allowances are made for floatage service from the float bridges of the New Haven at Harlem River to those of the
122 Pennsylvania at Greenville, N. J., across New York harbor, and for special services of connecting railroads, as, for example, the Union Railroad, operated by the Pennsylvania, at Baltimore, Md. At many points on the Maine Central and the Boston & Maine, exclusive of the latter's Fitchburg division but including Boston, an arbitrary of 1 cent per 100 pounds, which has been maintained without change, notwithstanding increases in rates, accrues to these carriers before prorating. These carriers insist that the arbitraries should be increased the same percentages as the rates were increased; their connections contend they should not be so increased. It appears that the New York Central receives arbitraries

of from 2 to 4 cents per 100 pounds on all traffic over its New York division into New York. In addition to the foregoing there are branch-line arbitraries; for example, those on the Wood River branch and Wickford branch of the New Haven. The "Steamer Maryland" arbitraries of 8.5, 6.3, 4.2, 4.2, and 4.2 cents per 100 pounds, first to sixth class, respectively, are in controversy. These apply to a floatage service across New York harbor and accrue to the New Haven. This record affords no ground upon which to determine the contention of the parties in respect of the allowances and arbitraries referred to. The rebuilding of the blocking now obtaining between points on the lines of the complainants and points on the lines of the defendants would of itself be an immense task for the accomplishment of which the record provides no basis; the revision of all of *of* these divisions individually would require expert, painstaking, and exhaustive study extending over a long period of time.

123 Complainants assert that they are receiving smaller divisions of the joint rates than would result from the apportionment of the rates exhibited on the basis of mileage as to approximately 61 per cent of the class rates from 5 of the principal tonnage-producing points on the Boston & Maine, the New Haven, and the Maine Central to 11 points in eastern trunk line territory; to 5 points in central territory; to 8 points in Canada; to 5 points in southern territory; and to 4 pounds on the Pacific Coast. That is to say, that of 2,162 rates and divisions submitted in evidence, complainants received from 1,328 of this number a smaller percentage of the Anderson class-rate scale than the other carriers received of the local rates from the points via which the traffic was interchanged. Notwithstanding, however, that complainants in numerous instances receive revenue in excess of what they would receive if the rates divided strictly on a mileage basis, they contend, as previously observed, that as originating or receiving carriers of a very large percentage of their total traffic, and for the other reasons stated, they are entitled to greater divisions than would accrue from the application of a mileage basis alone and that the consolidation of the smaller lines into the systems now composing the lines of the complainants has enabled them to haul traffic via more direct routes and thus lessen the distance theretofore involved. On the other hand, the hauling of traffic via the more direct routes and the division of rates on the basis of the actual or constructive distances via the indirect routes previously used necessarily affords the complainants greater mileage in the division of the rates.

124 The Theory of the Exhibits.

In exhibited rates and divisions the complainants show the points of origin and of destination; the distances between them; the mileage in New England to the interchange point via which the traffic moves and the mileage from that point to destination; the per cents of the total mileage within and without New England; the joint rates, first and sixth classes usually, from, to or between the

points of origin and destination; the Anderson scale, first and sixth classes, for the distance from or to the point of origin in New England to or from the interchange point; the local rate, outside of New England, from or to the interchange to or from the destination point; the revenues, in cents per 100 pounds, accruing, on the basis of the divisions, to the complainants and to the defendants; the per cents of such revenues to the Anderson-scale class rate and to the local rate west of the interchange point; the earnings per ton-mile in cents derived from the various rates; the amount in cents; and the per cents thereof accruing to the complainants and to the defendants in excess of or less than a mileage prorate. These exhibits are supplemented by charts showing the divisional blocking, accompanied by statements of actual distances from and to particular groups east and west of the gateways; the prorating distances, and whether the latter are less or more than the former. The exhibits were not submitted to show that any particular division is unjust, unreasonable, or inequitable; no attempt was made to deal with divisions individually; and all of complainants' traffic witnesses stated they dealt with the situation only "as a whole." One witness
125 for complainants said "there are spots as shown on this exhibit indicating that the division is a fair division." Complainants lay stress on the fact that these exhibits show that in a substantial number of cases their division is less than would be received under a mileage prorate, and that in many their division, compared with the Anderson scale for the same distance, is relatively lower than the division received by defendants, measured by their local rates. Thus, summarizing three of their exhibits, they show that out of 2,162 joint rates listed, they received from 1,328 a smaller percentage of the corresponding Anderson-class rate than defendants received of the local rate for their portion of the haul. Complainants also contend that as originating or receiving carriers of a very large portion of the traffic interchanged, they are entitled to greater divisions than would accrue from the application of a mileage basis alone.

It is contended for defendants that the exhibits submitted are not sufficiently complete to afford the basis for a revision of the existing divisions, and that they are not typical of the entire situation because of the comparatively few points used and the absence of tonnage figures. The direct comparisons are of the hauls in New England with those outside of New England, irrespective of whether the distances are the same or less or greater in one instance than the other. In order to obtain an accurate comparison of a short haul in New England with a short haul in trunk line or central territory, for example, it would be necessary to consult different exhibits and weigh the circumstances and conditions applicable in each instance, which are not fully disclosed. Medial points
126 in division blocks of origin and of destination, weighted with their proper share of the tonnage of the group, and considered in connection with all the circumstances and conditions surrounding the rates ought to be divided, accompanied with consideration of the abilities or disabilities of the participating carr-ers,

would seem to more fairly portray the situation. In the establishment of mileage blocks it is, of course, possible in the bargaining of divisions for one carrier to so arrange its tonnage-producing points that the greatest measure of constructive mileage will apply therefrom and necessarily a mere comparison of distances is not illuminating.

As has been observed, no separate statement of the divisions accruing to the Bangor & Aroostook was submitted. One of its principal junction points is Brownville Junction, Me., where it connects with the Canadian Pacific. Through that junction, via the Canadian Pacific, and Adirondack Junction, Quebec, joint class rates apply from points on the Bangor & Aroostook to points on the New York Central. There are also commodity rates which apply between points on the Bangor & Aroostook and points on the New York Central via the Maine Central, Boston & Maine, and Boston & Albany. The class rates are made by the addition of arbitrary proportions established by the Bangor & Aroostook, which accrue to it in the division of the rates. The commodity rates are similarly constructed. The record discloses no basis upon which any conclusion can be reached in respect to the arbitrary proportions of the Bangor & Aroostook.

127 Of the tonnage interchanged between the Rutland and its trunk line connections, the New York Central and the Delaware & Hudson, 47 per cent consists of coal, the divisions upon which are not shown. An approximately equal amount of merchandise tonnage is interchanged with the New York Central at Norwood and Chatham, a large percentage of which is fluid milk and cream and their products, to which divisions shown by the complainants do not apply.

Two-thirds of the capital stock of the Central Vermont Railway is owned by the Grand Trunk Railway. The road operates through a sparsely settled country. American and Canadian customs work at St. Albans, Vt., a port of entry, results in much delay to equipment and extra switching, entailing an expense of about $84,000 a year. There are no divisions of joint rates between the Central Vermont and the New York Central west of Buffalo; there is comparatively little evidence of the divisions east of Buffalo. Other than the expense incident to the customs work, the principal expenses to which particular attention is drawn are wages increased from 87 to 340 per cent since the test period, and the cost of keeping the line clear of snow and ice and of high water, the average therefor, for the last nine years, having been about 1 per cent of the total revenues.

The road connects with the Grand Trunk at St. Johns, Quebec, and at Swanton, Vt. The principal divisions shown by it apply in connection with the New Haven via Harlem River. The division of the rates between the Central Vermont and the New Haven and Grand Trunk, respectively, are not shown.

128 The main line of the Maine Central extends from Portland to Vanceboro, Me., connecting there with the Canadian Pacific; it also connects with the Bangor & Aroostook

at Northern Maine Junction. A secondary line is operated through Maine, New Hampshire, and Vermont to Lime Ridge, Canada, connecting there with the Canadian Pacific and the Grand Trunk railways. Of the 8,000,000 tons of freight handled annually, consisting principally of lumber and forest products, lime and granite, products of agriculture, canned goods, cotton and woolen goods, and boots and shoes, 18 per cent is "overhead," 31 per cent local, 32 per cent interline New England, and 37 per cent interchange.

There are no joint class rates between points on the Maine Central west and north of Lewiston, Mechanic Falls, Brunswick, and Bath, Me., and eastern trunk line territory. On this traffic the Maine Central receives proportional rates beyond Brunswick in addition to divisions of the Brunswick rates. On the mountain division from Portland to Lime Ridge and on its Rockland division, the Maine Central has percentage divisions applicable in connection with eastern trunk lines, subject to a terminal deduction of 2 cents per 100 pounds before prorating, which accrues to the Maine Central. East and north of Brunswick there are some joint rates divided by allowing the Maine Central proportional arbitraries in addition to the regular Brunswick basis of divisions.

On central territory traffic, the Boston rate applies to and from Maine Central stations east of Portland to and including Rockland, Mount Desert Ferry, Washington Junction, Milford, Norridgewock, and Rumford, Me., and the entire mountain division. This
129 territory is divided into the Rockland group, which includes territory east of Portland to and including Brunswick, Bath, Lewiston, and Mechanic Falls, and points from Portland to Lime Ridge, Quebec, and the Ellsworth division group. The Maine Central receives a terminal deduction of 2 cents per 100 pounds before prorating in connection with both the Rockland and Ellsworth group percentages.

There are no through class rates between territory beyond the Boston rate group and central territory. The Maine Central receives in division arbitraries added to the Boston rate to this territory, the balance being divided on the Ellsworth basis. There are some joint commodity rates to and from points beyond the Boston group in the division of which the Maine Central receives agreed proportional arbitraries, the balance being divided upon the Ellsworth group basis.

To and from points on its Rangeley division, Mechanic Falls and north, on traffic interchanged with the Grand Trunk at Mechanic Falls, the division is made on the basis of allowing the Maine Central graded specifics instead of the percentage basis.

As prorating mileage from the Rockland group, the Maine Central receives 117 miles. The actual distances to representative points from Portland are: to Lewiston, 37 miles; Bath, 38 miles; Mechanic Falls, 45 miles; Lime Ridge, 208 miles. The Rockland group includes Rockland, 86 miles from Portland, with an allowance of 30 miles for the Bath ferry. As prorating mileage from the Ellsworth

group the Maine Central receives 179 miles, the actual dis-
130 tance from Portland to Mount Desert Ferry. The actual distances from other points in this group range from 84 to 137 miles.

The principal interchange of the New Haven is with the Pennsylvania, Central of New Jersey, Lehigh Valley, and Long Island through Harlem River. Complainants have not submitted any evidence in respect of the divisions to points on the lines of the Lehigh Valley and the Long Island.

As stated, the first divisions were established via Harlem River between the New Haven and the Pennsylvania; the blocking of the Baltimore & Ohio was determined with reference to that of the Pennsylvania, and that of the Lehigh Valley is similar. Originally, the New Haven line proper took prorating mileage of 100 miles to Springfield and 200 miles to Boston. The Philadelphia, Pa., Baltimore, Md., and Washington, D. C., blocks on the Pennsylvania took 100, 200, and 250 miles, respectively. Thereafter the groups expanded westward until there are now 52 mileage blocks on the Pennsylvania, and with the expansion the New Haven received higher mileage allowances, drawing, for example, 222 miles for the Hartford group, plus 60 miles for the float service across New York harbor. In connection with traffic to Washington proper as contrasted with the Washington group, an allowance of 3 cents per 100 pounds was made to the Pennsylvania for the use of a toll road known as the Union Railroad, the bonds of which were guaranteed by the city of Baltimore. Through a tunnel at Baltimore it connected the Philadelphia, Washington & Baltimore and the Baltimore & Potomac, and its track was used for 8 miles. The road is now owned by the Pennsylvania.

131 To test the belief of the defendants west of the Hudson River that the divisions to the New England lines are liberal, a comparison of the revenues received by the New Haven from or to Greenville, N. J., on traffic from Boston, Fall River, Hartford, Winsted, and Poughkeepsie to Philadelphia, Baltimore, Altoona, Harrisburg, and Pittsburgh was made with divisions of the same rates on 50-mile blocks with a 50-mile terminal allowance for each road which performed a terminal service, with and without a deduction of 60 miles for the float service across New York harbor. The comparison to Pittsburgh will be sufficiently illustrative. The revenue is shown in cents per 100 pounds:

	Boston.		Fall River.		Hartford.		Winsted.		Poughkeepsie.	
	Classes.									
	1	6	1	6	1	6	1	6	1	6
Revenue shown by complainants	30	13.3	47.2	16	40	13.3	39	13.3	36.3	12.1
50-mile block and 50-mile terminal	38.1	12.9	38.1	12.9	29.1	9.9	29.1	9.9	27	9
With deduction for float service	41.8	14.2	41.8	14.2	33.8	11.5	33.8	11.5	31.5	10.1

In a majority of the instances the New Haven has a better revenue than it would have under either of the stated bases. The allowance of a 50-mile terminal is a well-recognized basis of dividing rates, and is made to cover the terminal expense.

These comparisons give no weight to tonnage. At the request of the defendants several of the complainants furnished lists of the most important tonnage-producing points on their lines; 48 points on the New Haven, 30 on the Boston & Maine, 15 on the Maine Central, and 9 on the Central Vermont. The actual distances from these points to Jersey City are compared with the pro-rating mileages on traffic destined to certain division blocks on the Pennsyl-
132 vania; the first block including principally points in Pennsylvania, such as Altoona, Harrisburg, and Pittsburgh; the second, Atlantic City, and Cape May, N. J.; the third, Baltimore, Philadelphia, and Washington; the fourth, points in New York such at Buffalo, Jamestown, and Rochester; and the fifth, points in Maryland, Delaware, and Virginia, such as Crisfield, Md., Delmar, Del., and Old Point Comfort, Va. To the first block the New Haven draws 393 miles, or 282 miles, dependent upon the block in which the point of origin is located. The minimum distance to Jersey City is from Stamford, Conn., 41 miles for which the New Haven draws 282 miles; the maximum distance is from Watuppa, Mass., 248 miles for which the New Haven draws 393 miles. These distances include the actual distance by water from Harlem River to the Jersey shore, without extra allowance therefor. The total actual miles aggregate 7,640; the New Haven draws a total constructive mileage of 14,646 miles. The other exhibits show substantially similar results. To 67 of the most important tonnage-producing points on the Pennsylvania, the actual mileage of that road aggregated 20,881; the prorating mileage 23,944 miles. The important tonnage points on the Pennsylvania are generally near the termini of the blocks; hence the actual and constructive mileages closely correspond. Although the actual mileage of the Baltimore & Ohio from and to Pittsburgh is greater than that of the Pennsylvania, it has, due to competition, accepted the prorating disances originally allowed the Pennsylvania. The prorating mileages of the
133 Baltimore & Ohio to 32 important tonnage stations exceed its actual distances to those stations by only 5.3 per cent whereas the prorating mileages of the New Haven on traffic to those points exceed its actual mileages by 70 per cent. The mileages allowed the New Haven on traffic interchanged with the Lehigh via Harlem River aggregated 26,876 miles to important tonnage points, as compared with its actual mileages of 15,284 miles. These figures are very general, but no more so than those submitted by the complainants.

The only direct connection of the Central of New Jersey with any of the complainants is with the New Haven at Jersey City using car floats across New York harbor. There is another route via Easton, Pa., and Maybrook via which traffic is handled in connection with the Lehigh & Hudson River, the haul of the Central of New Jersey being 73 miles less than that via the direct route. The evi-

dence submitted by the complainants of divisions in effect between them and the Central of New Jersey is meager, although reference was made in the amended complaint to certain divisions applicable in connection with the Boston & Maine and this defendant via Mechanicsville and Wilkes-Barre, Pa. A portion of the divisional arrangements was explained by a witness for this defendant. It is sufficient to say that a test of the 14 percentage bases by a mileage prorate and by the 50-mile block plan shows that under either plan the New Haven would receive less revenue than it now receives.

Taking stations submitted by the New Haven as having handled the largest amounts of received and forwarded tonnage based
134 on the month of August, 1920, other than the junctions between the New Haven to Boston & Albany junctions is shown that the shortest haul from such points on the New Haven to Boston & Albany junctions is 10 miles, for which the New Haven receives 321 miles on traffic handled to and from points on the New York Central and connecting lines west of Buffalo. The longest haul is 116 miles, for which the New Haven also draws 321 miles. To these junctions from 137 points located on the New Haven, each of which in 1906 had 3,000 or more persons, the average distance to the Boston & Albany junctions is 42 miles, for which the New Haven draws either 255 or 321 miles, dependent upon the block within which the point is located. From Boston, Providence, Bridgeport, Hartford, Worcester, and Springfield, via the New Haven to Harlem River, thence to Chicago, Indianapolis, Cincinnati, East St. Louis, Grand Rapids, Mich., and Cleveland, the average percentage received by the New Haven is 25.9; by the Pennsylvania lines east, 39.7; and by the Pennsylvania lines west, 344. If these rates were divided on an actual mileage prorate, the percentage of the New Haven would be reduced to 15.7; that of the Pennsylvania lines east increased to 39.3; and that of the Pennsylvania lines west increased to 45.

The only rates and divisions exhibited via Boston & Albany junctions from points on the New Haven were from Westerly, R. I., via Worcester, New Bedford, and Framingham, Mass.; from Stamford, Conn., via State Line, N. Y., to Rochester, Syracuse, and Buffalo, N. Y.; and from Westerly and New Bedford, via the junction points named, to Grand Rapids, Mich. The divisions of
135 joint class and commodity rates between points on the New York Central east of Buffalo and points on the New Haven via Boston & Albany junctions are expressed in specific amounts, that is, the rates are divided upon an arbitrary basis. The divisions were based upon a stipulation by the New Haven that it should receive these specific amounts irrespective of the distance or the measure of the rates, and that it should receive the same revenue in cents per 100 pounds as it then received on traffic to Chicago. The arrangement was modified in 1903 to provide that, as the rates were increased or decreased, the divisions of the New Haven should be increased or decreased on a prorate basis, and the arrangement was then extended to other divisions and branches of the New York Central east of Buffalo. Since 1906, when the divisions were in-

creased, the New Haven has received 25 per cent of the Chicago rate to and from points in the New Haven group, which is west of Willimantic and New London, Conn., and 20 per cent of the Chicago rate to and from points in the Providence group, which is east of the named points. These percentags, converted into mileages, gave the New Haven 321 miles and 255 miles, respectively, from the New Haven and Providence groups, and these mileages are used in dividing the rates between the New Haven and the New York Central west of Buffalo. Only one point west of Buffalo, Grand Rapids, Mich., located on a branch line of the New York Central, is shown by the New Haven in connection with the divisions applicable via the Boston & Albany junctions to points on the New York
136 Central. From Westerly and New Bedford, 9.2 per cent and 5.5 per cent, respectively, of the total distance is traversed by the New Haven; it receives 27.2 per cent of the first-class rate and 27 per cent of the sixth class rate from those points to Grand Rapids.

Defendants assert that the evidence introduced by the New Haven affords no indication as to the manner in which the immense traffic between the New Haven and the New York Central and its connections is divided.

The principal junction point between the Delaware & Hudson and the Boston & Maine is Mechaniesville, N. Y. From 29 of the 30 important tonnage points on the Boston & Maine to 10 representative points on the Delaware & Hudson; 3 points in eastern trunk line territory and 2 points in central territory, defendants compare the present divisions with those which would result under: (1) actual mileage prorate; (2) 50-mile blocks for each carrier; and (3) 50-mile blocks with additional 50-mile terminal for the originating and the terminal carrier and actual distance for the intermediate carrier. If any of these bases were applied, a material reduction in the revenue of the Boston & Maine would result.

The other principal interchange point of the Boston & Maine is Rotterdam Junction, N. Y., where it connects with the New York Central. The distance from Portland to Rotterdam Junction via Ayer Junction, Mass., is 281 miles; from Boston to the same junction it is 209 miles. For the former the Boston & Maine draws 320 miles; for the latter, 212 miles. On the inbound traffic from points on the New York Central via Rotterdam Junction to
137 the 30 important tonnage-producing points on the Boston & Maine, ranging in distance from 67 to 290 miles from the gateway, the Boston & Maine draws from 212 to 437 miles; the excess prorating distances range from 3 miles to 189 miles. A similar result is shown as to out-bound tonnage from the same points. From all these points save Boston, Fitchburg, Gardner, Waltham, and North Adams, Mass., the Boston & Maine receives, before the joint rates are divided on the basis of the prorating distances specified, a terminal allowance of 1 per cent per 100 pounds.

One of the exhibits submitted by the Boston & Maine shows rates and divisions between Johnsonville, Keene, Fitchburg, Boston, Concord, Portland, and S. Johnsbury, and New York via Troy, N. Y.,

and the New York Central. Special consideration is asked of the divisions between Boston and New York. The total distance via Troy is 336 miles; the short-line distance via the New Haven Direct, using Jersey City as typical, is 218 miles. The haul of the Boston & Maine to Troy is 190 miles; the prorating distance exceeds this by 1 mile. The first-class rate from Boston to New York is 74 cents per 100 pounds, either by the New Haven direct or via the Boston & Maine and Troy. The Anderson scale for 190 miles is, first class, 82.5 cents per 100 pounds. The actual distance from Troy to St. John's Park station, New York, is 150 miles, 2 miles less than the prorating distance. The Anderson scale is not in effect between Boston and Troy. After deducting a terminal allowance of 2 cents per 100 pounds accruing to the New York Central for the use
138 of its rail terminals in New York, the proportion of the Boston & Maine of the existing class rate from Boston to Troy is 56.34 per cent. The local rate west of the junction, first class, is 55.5 cents per 100 pounds, which is materially lower than the Anderson scale for a similar distance. Even taking this extreme instance on traffic which could be handled direct from Boston to Neew York via lines of and leased by the New York Central, the Boston & Maine receives only 1 cent per 100 pounds less from a competitive rate than a strict mileage prorate would afford it.

Divisions via Maybrook

Maybrook and Campbell Hall, 25 miles southwest of the Poughkeepsie bridge, are practically one interchange for the Erie, Lehigh & Hudson, Lehigh & New England, and the New York, Ontario & Western, which connect at one or the other of these junctions, via the Central New England, with the New Haven. The Delaware, Lackawanna & Western and the Central of New Jersey have direct connection with the Lehigh & Hudson. Prior to various dates from 1901 to 1908 all of the principal trunk lines now using the Maybrook gateway had divisional arrangements via Harlem River, which were transferred to Maybrook. The divisions between the Erie and the New Haven were established in 1896 on the basis of those applicable in connection with the Pennsylvania. Later the interchange was moved to Newburgh, N. Y., without change in the divisions. Under this arrangement the New Haven had, except when the river
139 was frozen over, a ferry service across the Hudson River of 1 mile, in lieu of the 13 miles across New York harbor, for which it received 40 miles on short-haul and 60 miles on long-haul traffic. The removal of the interchange from Newburgh to Maybrook shortened the haul of the Erie 18 miles (although the line of the Pennsylvania to Chicago, Pittsburgh, and Cleveland is shorter than that of the Erie), whereas the actual mileage of the New Haven-Central New England was thereby increased 25 miles. The shifting of the interchange with the Delaware, Lackawanna & Western to Maybrook necessitated the use of an intermediate carrier, the Lehigh & Hudson, for 58 miles, and increased the through haul of the New Haven-Central New England 11 miles. In 1908, when

the interchange of traffic from points on the Philadelphia & Reading and Baltimore & Ohio railroads via the Central of New Jersey was changed from Harlem River to Maybrook, these three carriers filed a complaint with us, No. 1400, C. R. R. of N. J. v. N. Y. N. H. & H. R. R. Co., alleging that the cancellation of rates, interruption of routes, and other facilities from points on the New Haven to points on the lines of complainants on the New York harbor interchange would subject complainants and their traffic to undue prejudice and disadvantage, but upon stipulation between the parties it was dismissed. The divisions of the New England lines were retained and their hauls were somewhat increased; the three carriers named divided their revenues with the Lehigh & Hudson, and the Central of New Jersey had its haul on traffic from points on the Baltimore & Ohio and Philadelphia & Reading reduced from 89 miles to 16
140 miles, the distance from Allentown to Eastern, Pa., and lost 73 miles of its haul on that traffic as well as on its own. The Lehigh & Hudson is controlled jointly by the Pennsylvania, Baltimore & Ohio, New York Central, Erie, and Central of New Jersey.

Southern Divisions.

We have shown that rates on traffic between New England and southern territory are divided on the basis of specifics. It is stated for complainants that these divisions, which have not been increased 40 per cent following Ex Parte 74, should be revised in harmony therewith. It is asserted that it is unreasonable to require the carriers in the eastern group to accept an increase of only 33⅓ per cent in their divisions on inter-territorial traffic, and that the southern lines should not demand 33⅓ per cent increase on this traffic in a territory in which an increase of only 25 per cent was authorized. The matter is now the subject of negotiations between the carriers, and this record does not afford a basis upon which to determine that issue.

Transcontinental Divisions.

Commodity rates and divisions are shown to Boston and Manchaster, N. H., via the lines of western carriers to Chicago, Ill., thence via the New York Central to Rotterdam Junction and thence via the Boston & Maine from points on the Pacific coast, and from the named New England points, and from Union Market, Gardiner, and Lowell, Mass., to the Pacific coast points. The list of commodities includes apples, wool in the grease, and canned salmon from
141 Seattle, Wash.; apples and lumber from Spokane, Wash.; canned fruits and hides, green, from San Francisco; and lemons and oranges from Los Angeles, and, principally, automobile tires, boots and shoes, cotton goods, dry goods, oil stoves, and patent medicines from the New England points to the Pacific coast terminals.

In all instances, save on apples from Seattle to Boston, cotton piece goods, carloads, from Manchester to Los Angeles, patent medicines, less than carloads, from Lowell to Los Angeles, and rubber

boots and shoes from Union Market to Los Angeles and Seattle, the New York Central receives less than it would receive upon a mileage prorate. Save in respect of these exceptions and on patent medicines, carloads, from Lowell to Los Angeles, the lines west of Chicago receive on all of the commodities more than they would receive from a mileage prorate.

The eastbound rates divide: east of Chicago, 25 per cent; west of Chicago, 75 per cent. The westbound rates divide: east of Chicago, 27.5 per cent; west of Chicago, 72.5 per cent. The east of Chicago proportion of the joint rates divides: to and from Boston, New York Central, 79.4 per cent; Boston & Maine, 20.6 per cent; to and from interior New England points, New York Central, 73.4 per cent; Boston & Maine, 26.6 per cent. In some instances—as, for example, from Los Angeles to Boston and Manchester—on lemons the proportion of the New York Central is further subdivided between the lines east and the lines west of Buffalo: To Boston, lines west, 52.4 per cent, lines east, 27 per cent; to Manchester, lines west, 48.5 per cent, lines east, 24.9 per cent. This is the only instance in
142 the whole record in which the subdivisions of the rates as between the carriers participating therein are shown. In all other instances the divisions have been shown only from and to the New England gateways. The Boston & Maine receives on transcontinental traffic its terminal deduction of 1 per cent per 100 pounds to interior New England points.

In numerous instances the percentages of the joint rates accruing to the lines east of Chicago are subject to the full class rates as maxima.

The following examples illustrate the extremes in these rates: The rate on dry goods, n. o. s., including woolens and flannels, less than carloads, from Boston to Los Angeles is $6.255 per 100 pounds; the Boston & Maine and the New York Central each receives it- full local, first class, $1.575; the Atchison, Topeka & Santa Fe Railway, the remainder, $4.68. On this traffic the Boston & Maine and the New York Central each receives less than a mileage prorate and the Santa Fe more than a mileage prorate. On cotton piece goods, calicoes, sheetings, and ginghams, from Manchester to Los Angeles, a distance of 1 mile less than from Boston to Los Angeles, the Boston & Maine receives, from a rate of $2.085 per 100 pounds, 19.38 cents and the New York Central 32.8 cents in excess of a mileage prorate, whereas the Sante Fe receives 52.2 cents less than a mileage prorate.

Complainants strongly emphasize the fact that the inadequacy of the eastern roads' divisions on transcontinental traffic is admitted by some of the trunk lines. Such an "admission" is of no probative force against the transcontinental roads, none of which was represented at the hearing.

143 Conclusions.

In Proposed Increases in New England, supra, the local situation in New England was portrayed in considerable detail. Therefore,

while we have considered the evidence now before us with respect to local conditions, we have endeavored to refrain so far as reasonably possible from a further exhaustive presentation of details and to confine our discussion to the directly pertinent facts prerequisite to a determination of the issues.

We think that there is merit in the allegations of defendants that the proceeding is, in substance, an effort on the part of complainants to augment their revenues from traffic which they interchange with their connections without regard to the question of whether the present divisions of the various joint rates are fair and reasonable or consideration of the probable effects upon the revenues of the respective defendants. The proceeding is essentially an outgrowth of Ex Parte 74. It is contended for complainants that our decision in that proceeding operated to the relative disadvantage of the New England lines because their inclusion in the eastern group gave them less additional revenue and defendants more than might otherwise have been received and because of the difference in the percentage increases authorized for freight and passenger traffic, respectively, the lower percentage of increase having been authorized for passenger traffic, which is, generally speaking, relatively greater on complainants' lines than on the lines of defendants.

At the close of complainants' case defendants moved to dismiss the prayer for relief under paragraph VIII on the ground
144 that we are without power to grant such relief. They moved also to dismiss other portions of the complaint, alleging that complainants had failed to make out a prima facie case and had not offered proof that would entitle them to the relief prayed. We shall, however, deal with the issues upon the record made.

In no proceeding heretofore brought under the provisions of the interstate commerce act have we been called upon to exercise powers so broad as those upon which complainants here rely. We may, therefore, fittingly advert to the controlling principles of law, illumined in the event of possible doubt by cardinal rules of statutory construction.

Under the substantive provision of section 1, paragraph (4), of the interstate commerce act, there rests upon every common carrier subject to the act the duty, in the case of joint rates, fares, or charges, to establish just, reasonable, and equitable divisions thereof as between the carriers participating therein which shall not unduly prefer or prejudice any of such participating carriers. A reasonable construction of the statute makes clear the intent of Congress that paragraph (4) of section 1 and paragraph (6) of section 15, taken together, should supersede former provisions of the statute and constructions placed thereon with respect to divisions of joint rates, whether established voluntarily or pursuant to our finding or order. Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co., 61 I. C. C., 272. It follows as a necessary corollary that we must be guided by the intent of Congress as expressed in the provisions of the present statute. It is fundamental that we can act only under the
145 jurisdiction conferred upon us by Congress. We may exercise only such powers as we now have subject to any limitations which now attach to them.

908

Under the provisions of paragraph (6), section 15, of the act we are authorized in appropriate cases, after full hearing, to prescribe by order the just, reasonable, and equitable divisions of joint rates, fares, or charges to be received by the several carriers. Our jurisdiction attaches irrespective of the manner in which divisions theretofore prevailing were established. And our duty to prescribe divisions arises when, after full hearing, we are of opinion that the divisions brought in issue "are or will be unjust, unreasonable, inequitable, or unduly preferential or prejudicial as between the carriers parties thereto." In so prescribing and determining divisions of joint rates we are required to give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and "any other fact or circumstance which would ordinarily without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare, or charge." Under the provisions of the section no one of the elements which we are required to consider is predominant; all are to be considered per se and relatively in the determination of just, reasonable and equitable divisions "to be received by the several carriers." These words "without regard
146 to the mileage haul" do not forbid consideration of the element of distance. They serve rather to emphasize the fact that other specified elements may outweigh the element of distance in which event we may properly disregard the mileage haul. The clause is inclusive rather than exclusive, and the general words "among other things" constitute a clear exposition of the intent of Congress that we should consider all the facts and circumstances. We are bound under the statute to determine whether divisions properly in issue justly, reasonably, and equitably compensate each carrier, relatively and per se, for the service it performs in the joint haul under joint rates, fares, and charges. Our determination must be predicated upon a consideration of all the various pertinent factors including the ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations. In the final analysis the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided which each carrier should receive.

By evidence of costs reflected largely in units of miles, ton-miles, locomotive-miles, and switching-miles, complainants endeavor to show that the cost of transportation over their lines is relatively greater than that incurred by defendants. The voluminous record upon which the case is submitted is replete with evidence of peculiar local conditions in New England and the consequent relatively higher cost of conducting services for which complainants allege they are not justly, reasonably, and equitably compensated, with the result that their financial needs are not met.

147 It may well be that complainants are operated as efficiently as are other carriers; the importance of their service to the public in the highly developed territory which they serve can not easily be exaggerated; but their financial condition is not measurably worse than that of some of the defendants. The public interest does not demand nor does the statute either expressly or by reasonable implication provide that we may prescribe increased divisions of joint rates, fares, and charges to be received by certain carriers merely because other carriers participating in the joint rates, fares, or charges, considered as a whole, have not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service, although this is one factor which may be taken into consideration. Nor are we vested with discretion by virtue of which the mandate of section 1, paragraph (4), that divisions of joint rates, fares, and charges as "between the carriers" participating in joint hauls shall be just, reasonable, and equitable might be made ineffective by administrative or judicial action. The remedial provisions of paragraph (6), section 15, of the act offer to the carrier a source of relief to which it may resort in the event of a failure to observe the substantive provision of section 1, paragraph (4), or in the event of a failure to agree upon divisions and indicate the facts and circumstances which the Congress intended should be considered in determining what is "just, reasonable, and equitable."

In the view of complainants, we have "ample power to readjust these divisions by adding to the divisions of the New England lines without in this proceeding attempting to readjust the divi-
148 sions between lines west of the gateways." It is submitted for complainants that "the New England lines are entitled to divisions 33⅓ per cent in excess of what they now receive" notwithstanding admissions that divisions of certain joint rates now received by complainants are reasonable and equitable and that the present blocking of divisions in New England is a "mess of inconsistencies" and must be almost entirely rebuilt. No evidence of the reasonable and equitable measure of divisions other than "as a whole" has been offered. No method by which the apparently incongruous plan of divisions now in force might be readjusted has been submitted and we are thus left to deal with the situation in the light of generalizations which can lead only to speculative ventures upon an unknown field. The various methods which have been suggested to alleviate the financial condition of the New England lines and to insure to them just, reasonable, and equitable divisions indicate in themselves the uncertainty of their application and it is apparent that if adopted they would not only perpetuate the inconsistencies to which complainants refer but would create new preferences and prejudices.

For defendant it is contended that the failure of complainants to submit any evidence of the divisions on coal traffic, irrespective of those on other commodities which have been heretofore enumerated, is fatal to complainants' request for blanket relief since we can not know whether the divisions on coal and the other traffic are more or less than those to which the complainants are entitled and if it

might be assumed that the divisions on the merchandise traffic was "as a whole" unjust and unreasonable, we have no evidence upon which to base an opinion as to whether the deficiency is or is
149 not met from the revenues on coal.

To treat the complainants "as a whole" or as a group would disregard the difference which obtain between the complainants individually. Much of the evidence adduced was solely in behalf of the New Haven and manifestly has no application to conditions on the Bangor & Aroostook, the Central Vermont, or the Rutland. The conditions obtained on the lines of complainants are so essentially dissimilar that general relief would not afford each of them reasonable and equitable divisions.

The terminal characteristics of the New England lines have long been recognized, and complainants show that constructive mileage and arbitraries have been allowed them in partial recognition of their terminal character. A witness for complainants testified that during the last 15 years there has been no substantial change in the characteristics of the New England roads, and, as has been seen, we permitted material increases in the class rates in New England which reflected the terminal characteristics of their roads. To what extent the constructive mileage and arbitraries recognize in the joint rates the terminal characteristics of the New England lines is not capable of accurate ascertainment from this record; whether or not they are reflected in such rates is doubtful, since for many years, for example, transcontinental rates have been blanketed over wide areas, and, despite the additional haul to New York, westbound rates from Boston and points north thereof are on the same basis as those from New York. Eastbound, the rates to Boston and numerous points grouped therewith are differentially from 7 to 2 cents per 100 pounds, first and sixth classes, higher than to New York. None can
150 question but that these rate adjustments, among others, are to the interest of New England. Whether they are reasonable or unreasonable is not in issue in this proceeding. Our power is limited to dividing the available rates; otherwise the additional costs of a particular carrier not reflected in the rate might leave no division for another carrier.

The age of the divisions affords no presumption that they are unreasonable; it may be that they were too liberal originally. The record fails to show clearly that relatively the New England lines have had exceptional handicaps which their competitors have not encountered. We are told that it cost the New England line $17,646,168 a year to have per diem substituted for mileage as statement is offered with which this amount can be compared. It is shown that New England is remote from the coal fields and that the New England roads must pay for the transportation of coal and other materials and supplies more than their connections pay, but there is nothing in the record to indicate that relatively these costs have increased to a greater extent than have similar costs in other territories. The relatively high proportion of passenger traffic on the principal New England roads has been especially stressed, but how that high

proportion should be translated into increased divisions of freight rates for the complainants is only vaguely and indefinitely indicated. The effect of the cost of labor in New England has been stated in gross amounts, and the alleged exceptional effect of such costs has been expressed in percentages for certain roads, but it may be that defendant roads operating in sparcely settled communities were also adversely affected by wage increases.

151 Terminal services does present one of the greatest operating problems which now confront the railroads of the country. Greater economies have been made in train operation than in terminal service. Terminal services should be more efficiently performed, and it may be that their costs are not adequately reflected in the rates, but nothing positive or definite is presented on this point.

If it had been clearly and definitely shown that particular divisions assailed were but fair compensation for the service performed when they were established and that since the establishment complainants have been subjected to relatively exceptional operating expenses of permanent character, some basis for an adjustment by us of the divisions of joint rates as between the several carriers participating therein would have been indicated if those exceptional expenses were reflected in the rates. Mounting operating costs, with which revenues have not kept pace, have been general. The voluminous, but yet limited, character of the divisions submitted; the selection of the points between which the divisions apply; the dividing of the rates only at the gateways; the almost total lack of the reasons which impelled the making of divisions via one gateway lower than via another; the doubt cast upon the reasonableness of the allowances and the arbitraries; the varying amounts of constructive mileage received by the complainants; the extent of the groups; the inconsistency of the division blocking; the failure of the Bangor & Aroostook to show any of its divisions; the fact that the Maine Central receivers terminal arbitraries and arbitrary proportionals on much of its traffic; the failure to submit divisions on coal,

152 high explosives, fluid milk and its edible products, fresh meat, in carloads, and other commodities; the absence of concrete final cost figures and indispensable facts, and, generally, the submission of much unrelated data, have resulted in a record that affords no basis upon which we might predicate a valid prescription of divisions. We are authorized to prescribe only just, reasonable, and equitable divisions "to be received by the several carriers." Full hearing and competent and relevant evidence are prerequisite. Any attempt to prescribe a blanket increase of divisions as here sought in the face of admissions and uncontradicted evidence that certain divisions are now just, reasonable, and equitable to complainants would override the plain mandate of law.

While we are urged to adjust the divisions "as a whole" on the presumption that the facts shown of record as to a part of the complainants are generally true as to all of them, and that they reflect the situation in New England, it is to be noted that some of the roads in New England have been excluded from the list of complainants and included in the list of defendants. To so deal with the

situation would not be treating the New England roads as a group. It would be taking from one road and giving to a less prosperous road, thus doing by indirection what the Congress deliberately and specifically refused to authorize us to do. The statutory provision for recapture of excess earnings from individual carriers also clearly negatives the idea that the Congress contemplated or intended that all carriers in a group should so share in the aggregate earnings of the roads in the group that all would be upon an equality. Such a plan would stifle all incentive to skill, efficiency, economy, and good management.

However, the record lays before us an existing condition of
153 divisional arrangements which is the antithesis of equality, uniformity, system, or order. A plan of transportation practices so fraught with incongruities and from which, as indicated by one of counsel, anything might be proved by a judicious selection of items, is indefensible. While the record affords no foundation upon which might rest a valid prescription by us of divisions, we can not disregard the conditions portrayed. Our duty would not be fully performed if we did not require a readjustment under which the conditions shall be relieved and demonstrably fair treatment accorded to all parties with respect to individual divisions. We are convinced, upon consideration of all the facts, that just, fair, and equitable divisions can not in many instances flow from the chaotic divisional arrangements to which we have adverted. We shall expect defendants and complainants to promptly submit to us proposed readjustments that will remove the inconsistencies portrayed of record and bring into conformity with the principles of law and equity expressed in the act the divisional arrangements, individually and as a whole, between complainants and defendants. To this end designation by the parties of appropriate committees of qualified personnel is recommended, and we shall expect the appointment of such committees to work jointly in revision of the divisions and to report to us at the end of 90 days after the date hereof the result of their efforts, together with statements of divisions upon which agreement has been reached, as well as those upon which there may not be complete agreement. Such statements may be accompanied by statements of fact and argument upon which the respective committees rely. Thereafter reports should be made to us at the end
154 of each period of 60 days until final and complete disposition of the issues shall have been accomplished. For these purposes the record will be held open.

EASTMAN, *Commissioner*, dissenting:

Throughout the majority report runs the criticism that complainants ask revision of their divisions "as a whole." The thought is that the law requires us to attack the problem atom by atom, withholding action until we have the necessary evidence to analyze separately the many thousands of joint rates and determine finally their just and equitable divisions. I am unable to accept this view of our power and duty. If the New England carriers were to obtain relief

in this proceeding which would be of avail against impending financial danger, it was necessary for them to move quickly and deal broadly with the situation. They merit no criticism for so doing, and in my opinion they have made out a case justifying temporary relief pending more detailed consideration of specific divisions.

The transportation act, 1920, was the product of months of hearings and intensive study. It was, I believe, the intent of Congress to provide for the transportation needs of the country and to confer upon us all necessary power to that end. We are an administrative as well as a judicial body, and the success of the present railroad policy depends largely upon our ability to use the power so conferred promptly and effectively when occasion demands. In this case I fear that the majority are construing certain vital provisions of the act in a way that will make it a less effective instrument than it was designed to be for the promotion of the general transportation
155 good.

The critical financial condition of the New England roads, in which the United States has an investment of some $125,000,000, is a matter of common knowledge. For some months they have been failing to earn fixed charges. It is at least possible that only some measure of success in this proceeding will save certain of these carriers from serious financial trouble. If the danger is not averted results will follow of direct and serious concern to the whole country. Not only will it be deemed proof of the failure and futility of the transportation act, 1920, but for years it will discourage investment in railroad securities in a part of the country which has been one of the great markets for such securities.

These results will be the more certain and severe because the financial trouble will be due to failure to earn upon legitimate investment. New England railroads have a reputation for financial mismanagement which is only in part well founded. The New Haven was the chief victim of this mismanagement, and it consisted in the waste of many millions of dollars in the purchase of securities of trolley, steamship, and other companies. But the investment of the New Haven in physical railroad property is sound, and if it earns a return on that investment it can at least pay its way. Its present difficulty is in earning even operating costs.

Although the larger New England lines operate in thickly settled country, where millions have been spent on second, third, and fourth tracks, the abolition of grade crossings, costly station and terminal facilities, and electrification, their railroad property investment per mile of road is relatively low. The average in 1919 was
156 $106,888 as compared with $148,631 for other carriers in the eastern group. The figures for the three principal New England lines were, respectively:

New Haven	$188,857
Boston & Maine	96,240
Maine Central	54,191

Contrast with these the following:

Bessemer & Lake Erie	$254,301
Delaware & Hudson	245,640
Central of New Jersey	240,172
Delaware, Lackawanna & Western	235,154
Erie	216,043
Western Maryland	205,418
Virginian	198,701
Ontario & Western	195,714
Pennsylvania	193,064

Preliminary information from our bureau of valuation, of record in this proceeding, indicates value for the New England roads in excess of property investment. No corresponding evidence was offered in behalf of defendants. The majority fail to note this fact, and throughout their report rate the property investment of the other carriers in the eastern group on equal terms with the property investment of the New England roads, as if it were known to be as sound and valid.

Our power to deal with the critical situation which the case presents depends upon the provisions of paragraph (6) of section 15 of the interstate commerce act, which define our duty with respect to divisions. Certain matters apart from mileage haul are specified which we must consider in fixing divisions. Out of the four so specified, two are as follows:

157 The amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation.

The importance to the public of the transportation services of such carrier.

If the fair measure of divisions were merely the amount and cost of the service rendered by the respective carriers, it is clear that neither of these matters would be relevant or material. Our problem would be to take a given joint rate, compare what each participating carrier contributes in the way of service and cost, and divide the rate accordingly. The fact that one carrier might be rich and another poor would have not the slightest bearing upon the ascertainment, nor would the importance to the public of the transportation service of any carrier. It follows that we can attach no weight to these matters which have been given so much prominence in the law unless we are prepared to accept the conclusion that in some cases it may be just and equitable and in the public interest to divide joint rates in disproportion to the amount and cost of the service rendered.

It is, I think, an inevitable conclusion that Congress intended to give us a wider jurisdiction and discretion in determining divisions than would have been proper if such determination were viewed merely as an isolated problem. In other words, divisions were regarded in connection with and as a phase of the larger problem of assuring a national transportation system sound and healthy in all its parts, and it was the definite intent to permit us, in fixing divisions, to take into consideration this larger end. I can conceive of no

other reason for the language quoted above and particularly for the prominence which has been given it.

158 Stating the purpose in another way: In the hearings which preceded the transportation act, 1920, attention was continually directed to the problem of the weaker roads. It was realized that the rule of rate making in section 15*a* would produce uneven results and leave this problem unsolved. While Congress was unwilling to go so far as to authorize the direct diversion of the excess earnings of the strong roads for the benefit of the weak, it did deem it wise and expedient to permit, and indeed require, the relative prosperity of carriers to be taken into consideration in determining the divisions of joint rates. Nor was this a means of doing indirectly what Congress was unwilling to — directly. It was, rather a means of going part way along the path suggested without traveling the full distance.

I find no difficulty, therefore, in reaching the conclusion that in this case we have both the right and the duty to consider, not only the relative importance and cost of the service rendered by the respective carriers, but also the financial needs of the New England roads and the consequences to the entire country if they should meet with serious financial trouble.

A second vital question of law is whether we have authority to make a temporary adjustment of divisions pending a further and more detailed consideration of the problem which they present, consuming many months of time. I take it that the majority believe that we have no such authority, but here also I feel that their view of the law is unduly narrow. As already indicated, we combine judicial and administrative functions and are really custodians of the national transportation interests. It is good administration to act quickly when the public interests demands, upon

159 the best evidence available, even if we know that readjustments may be necessary before the problem under consideration is finally put to rest.

This is precisely what we have done in the administration of our powers over rates. In the summer of 1920 we heard group after group of shippers complain that they would suffer hardship and unreasonable rates if a general percentage increase were permitted. Our conclusion in Increased Rates, 1920, 58 I. C. C., 220, 243, was this:

> It would be desirable, if it were possible, to determine definitely the commodities, the sections of the country, and even the individual rates and differentials which will be disturbed by a percentage increase. *This is precluded by the necessity of prompt action upon the main issues presented.* [Italics mine.]

In other words, we authorized rates which we could only find "not unreasonable in the aggregate" (page 246) and which we knew might, and probably would, be harsh and unreasonable in specific instances unless subsequent readjustments were made. But we did not hesitate to do this, because the emergency called for "prompt

action," even though it might be temporary, and as good administrators we did the best immediate things that could be done in the public interest.

I know of no reason why a similar policy should not be followed in the case of divisions. Surely we are not called upon to withhold general remedial action for fear of possible injustice to carriers in specific cases, when we do not withhold such action for fear of possible injustice to individual shippers. It is true that our duty under the law is to establish "Just, reasonable, and equitable divisions," but it is likewise true that our prompt but con-
160 fessedly imperfect action in Ex Parte 74 was founded upon the provisions of paragraph (2) of section 15*a*, which begins with the words: "In the exercise of its power to prescribe just and reasonable rates, the Commission shall, etc."

I think it a logical conclusion, therefore, that we are not without power to prescribe a temporary adjustment of divisions where we know that further injury may be necessary before stability and permanence can be attained, if good administration of the national transportation interests calls for "prompt action" and the best measure of relief that can presently be afforded. It should here be noted that while interchange traffic with defendants is a very large factor in the revenue of complainants, the interchange traffic of any one of the defendants with complainants is but a minor factor in its revenue.

I come now to the consideration of what action, temporary or permanent, in the critical situation by which we are faced is justified by the law and the record.

Before attempting to answer this question it may be well to clarify certain aspects of the evidence as set forth in the report of the majority. Complainants filed exhibits showing the divisions, as between New England roads and the lines west of the Hudson, of several thousand joint rates applying between every division block in New England and representative points of traffic importance in every part of the eastern group. The traffic expert for the Pennsylvania testified that the selection was illustrative and fair. Further elaboration would only have encumbered the record with cumulative evidence. Any conclusion that the complaint should be dismissed because of inadequacy in this presentation is clearly unwarranted.

161 The majority make much of the apparent inconsistency of many of these divisions. It is true that the division blocks often seem irregular and illogical and that they are the outgrowth of bygone conditions; but much of the apparent inconsistency in the divisions is due to the fact that they are constructed upon the blanket principle. We have had occasion frequently to observe that where rates are based upon this principle inconsistencies are bound to develop, particularly at border points, and that sound conclusions can only be reached by considering average rather than individual rates. This is just as true of divisions which are based upon the blanket principle.

Complainants compare the percentages which their divisions bear

to the local "Anderson scale" rates between the same points with the percentages which the divisions of defendants bear to the corresponding local rates west of the Hudson. In majority of instances the New England percentages are smaller. In a number of cases, also, their divisions are less than would be received under a strict mileage prorate, and in many more the excess is slight.

Defendants likewise test the divisions by showing:

1. That for the most part they give the New England roads more than would be received under a mileage prorate.

2. That frequently they are larger than the divisions which would result from a 50-mile block plan (allowing an extra block of 50 miles to both the originating and the terminal carrier.

3. That on typical traffic the New England divisions are based on constructive mileage substantially in excess of actual mileage.

162 In considering these tests, it must be borne in mind that because of short haul and terminal expense the New England carriers would be entitled upon any theory to better than a mileage prorate, even if they were in other respects as favorably circumstanced as the carriers west of the Hudson. The 50-mile block plan, also, is designed merely to afford some additional compensation to the originating and terminal carriers and would be appropriate for application between carriers operating disadvantages of the New England carriers apart from terminal service. It further appears that in their comparisons between actual and constructive mileage defendants fail to give weight to the fact that a part of the difference is accounted for, in the case of traffic interchanged through the Harlem River gateway, by the allowance of 40 miles on short-haul traffic and 60 miles on long haul for the float service in New York harbor. All the floatage between its terminal and the Jersey shore, a distance of 14 miles, is performed by the New Haven, and the cost of moving these floats through the congested waters of the Hudson and East rivers is very great. Constructive mileage for the defendants also exceeds actual mileage in many cases, and it is apparent that if this excess were relatively equal to the New England excess, the result would be the equivalent of a mileage prorate. As a rule, the New England excess is relatively greater; but it appears that in the southern peninsula of Michigan, where conditions are said, I think quite erroneously, to resemble those in New England, the constructive mileage is nearly 100 per cent in excess of actual.

163 In the report of the majority considerable attention is given to the seemingly large divisions received by the New Haven on traffic interchanged with the Boston & Albany division of the New York Central. The fact is that the New Haven can interchange traffic with the main line of the New Haven has short, unconcentrated hauls com- When it consented to short haul itself by participating in joint rates with the Boston & Albany on traffic to or from the more distant New York Central destinations, it insisted upon the same divisions as it would have received via

the other routes. In this interchange with the Boston & Albany the New Haven has *h*hort, unconcentrated hauls combined with terminal expense, and the Albany receives and bridges the traffic on its main line. Reference is also made to the transfer of certain traffic from the Harlem River to the Maybrook gateway, the New England divisions remaining the same. This transfer, however, as a rule lengthened the New Haven haul and shortened the haul of the carriers west of the Hudson, and for the floats in New York harbor there was substituted the costly Poughkeepsie bridge owned and controlled by the New Haven through the Central New England.

Summing up this evidence as to existing divisions it can only be regarded as unfavorable to the New England carriers if attention is concentrated upon mileage haul and if the other facts and circumstances "without regard to the mileage haul," which the act requires us to consider, are not given the weight to which they are fairly entitled.

Coming, then, to the crux of the problem, I believe that it has been shown that the New England carriers are justly entitled to some measure of immediate relief, pending further and more detailed inquiry, and that it may lawfully be granted upon either one of two independent and distinct grounds.

164 Without going further, I believe we are justified in granting such relief in reliance upon those provisions of the act which require us to take into consideration financial needs and the importance to the public of the transportation service rendered. At the present time many carriers are in poor financial condition, but it will, I think, be conceded that there are no important carriers whose property investment account is known to be conservative that are so near the brink of serious financial trouble as the New England roads. It was to give us power to ameliorate and remove the threat of precisely such situations, without disrupting business conditions by experiments with special rate increases, that the provisions above mentioned were made a part of the law. Upon any other theory they become mere language without meaning.

But without regard to financial needs, there is evidence justifying temporary relief for the New England roads. I have in mind the evidence which proves beyond question that the burdens of the New England carriers have grown out of proportion to the burdens of the lines west of the Hudson. Relatively, the situation has recently changed to the great disadvantage of the New England lines.

The majority find that existing divisions are greatly in need of revision and urge that the task be undertaken at once. But for many years and until the radical change in conditions brought about by the world war, these divisions stood unchallenged, and it is a fair presumption that upon the whole they produced equitable results. If, then, the New England carriers have shown that the recent changes in conditions has been far more burdensome to them than to defendants, it is but just that some temporary ad-

165 justment be made to compensate for this distortion pending the establishment, after what are likely to prove months of negotiation, of divisions upon a more scientific basis.

The majority have, I fear, wholly failed to grasp the importance and significance of the evidence showing the effect which the recent heavy increases in rates and wages have had upon the New England lines. This failure is made clear by the fact that they apparently regard as unfavorable to complainants' contentions the comment of one of their witnesses that "during the past 15 years there has been no substantial change in the characteristics of the New England roads," although it is these very unchanged characteristics that have made the increases in wages and rates so burdensome.

The record shows clearly that by reason of these increases, occurring within the past three years, the burdens of the New England carriers have grown at a disproportionate rate in at least the following respects:

1. Cost of Fuel and Supplies.—Certain carriers west of the Hudson in the eastern group have no mines upon their own rails, but there are not many such and all are much nearer the mines than are the New England carriers. Carriers with mines on their own rails can secure better contract prices; but this is a lesser matter. The vital difference between the New England roads and the other carriers, so far as the expense of fuel is concerned, is the cost of transportation. It is inevitable that when freight rates are increased the carrier which brings its fuel from the longer distance will suffer disproportionately; and this is precisely what has happened
166 in New England. The fact stands uncontradicted upon the record, and the same is true of steel rails and many other supplies.

2. Labor Expense.—The New England roads claim that they have suffered a disproportionate increase in wages upon the ground that they were paying relatively less than the carriers west of the Hudson prior to the so-called standardization. The evidence indicates that this is true of the Bangor & Aroostook, Central Vermont, Rutland, and Maine Central, but probably not, in general, of the New Haven and the Boston & Maine. A far more important consideration, wholly neglected by the majority, is that it requires substantially more labor in New England to produce a given number of ton-miles of freight transportation than in other sections of the eastern group; and there is no evidence which warrants a conclusion that this is due to inefficiency. It comes about from the slowness of transportation incident to terminal service and the splitting of the traffic at frequent junction points, and from the fact that the pick-up and delivery character of the service and the diffusion of traffic over many secondary and branch lines make it necessary to handle the freight by a large number of short trains rather than by a small number of long trains. The following statistics are of great significance. They show percentages for the New England lines as compared with the trunk line and central territory roads.

Car-miles per car day	73.5 per cent.
Net ton-miles per car day	60.8 per cent.
Net ton-miles per train-mile	57.4 per cent.
Net ton-miles per locomotive day	55.9 per cent.
Cost of yard expenses per 1,000 net ton-miles	155.5 per cent.
Freight train costs per 1,000 net tone-miles (wages)	184.1 per cent.
Freight train costs per 1,000 net ton-miles (total)	176.7 per cent.

167 There are other figures of like import. A simple illustration of the principal involved is this: If one factory can turn out 100 articles per day with the labor of two men and another factory is so equipped that six men are required to produce the same number, an increase of wages will cause a disproportionate increase in the operating costs of the second factory, other things being equal. This is precisely what has happened in the case of the New England carriers, as compared with the lines west of the Hudson. The record so shows.

3. Per Diem Expenses.—At the time when the great bulk of the present divisions were established, car hire was on the mileage basis. Complainants show that if the mileage basis had been maintained and had been increased at the same rate that the per diem has increased, the car-hire cost to the New England lines in 1919 would have been $16,567,350. On the per diem basis it was $34,213,518, a difference of $17,646,168. For present purposes it is immaterial whether or not per diem or mileage is the proper basis. The undisputed and important fact is that mileage was far more favorable to the New England lines than per diem, and that the substitution of the latter has imposed a burden which did not exist when the divisions were established.

Defendants suggested that the New England roads could avoid the payment of per diem by the acquisition of more cars. While I think this irrelevant, since in any event it would merely change the form and not the substance of the burden, the claim is challenged not only by complainants but also by certain defendants, such as the Pere Marquette, who are similarly situated with respect to per diem payments.

168 In the foregoing discussion I have not spoken of the contention that the inclusion of the New England lines in the eastern group made the rate increase for the carriers west of the Hudson in Ex Parte 74, $25,000,000 more than it otherwise would have been, yet this is a matter which ought not to be disregarded. Whatever the precise amount, the fact remains that the inclusion of the New England roads improved the situation for the other carriers, and we may properly take this into consideration.

My conclusion is that we may and should require a temporary adjustment of the divisions in favor of the New England lines, keep the case open, and direct the parties to reopen negotiations and be prepared to renew the trial of the case at or before the expiration of one year if they are unable to agree among themselves as to a permanent adjustment in the meantime. As I have tried to show, the record will support such temporary relief either upon the theory of financial

needs or upon the theory of changed conditions, or upon a combination of the two. The evidence is insufficient to measure the effect of the changed conditions accurately in dollars and cents but it is not insufficient for a conservative estimate, and partial reliance upon financial needs makes even this unnecessary.

Stated concretely, my judgment is that the least we should do is to require the carriers west of the Hudson for a period of 18 months, unless otherwise ordered, to shrink their divisions by 15 per cent on all interchange traffic, except coal, with complainants, this amount to be added to the divisions of the New England lines. Coal must be excepted for the present, because no evidence has been introduced in regard to the divisions on this traffic, and complainants have themselves asked that we allow the case to remain open for the sub-
169 mission of further evidence on this point.

The plan thus suggested would probably help certain New England carriers more than others, but they would have it within their power to correct such result by adjustment of their own interline divisions, and we could with propriety suggest that this be done.

POTTER, *Commissioner*, dissenting:

I can not concur in the majority report, which seems to me needlessly to concede the futility of the transportation act and the impotence of the Commission to remove injustice. I concur generally in the views expressed by Commissioner Eastman, but desire to amplify the reasons, as I see them, for adopting his conclusions.

The transportation act has settled the carriers upon the high plane of public service. The aspect of private business enterprises, entitled to all they can win from their position and strength, limited only by what the traffic will bear, is no longer dominant. Subject only to supreme decree on constitutional questions their revenues are to be limited to fair compensation for the services which they render. The Congress has expressly applied to them the rule which, in the present day, must be recognized with increasing application to all industries—that enterprises are justified primarily, not for individual gain, but because the public needs them and those who thus serve the public are entitled to receive as profits fair compensation for the service which they render. The United States Chamber of Commerce recently recognized the passing to this era when, speaking for the industry and commerce of the nation, by deliberate resolution said "The foundation of all enterprise is primarily that of service to the community."

170 As public servants carriers are to have public protection and fair compensation. Having regard to the essential function which they perform, the railways which are honestly, economically, and efficiently managed are entitled to a status and relation to industry and to each other which assures them prosperity. To these ends the transportation act was framed. We have been given the power to work out the detail of rate adjustment to yield the compensation which the Congress has determined shall be provided. We are authorized to act in helpful ways in matters of operation. We are

charged with the duty of enforcing correct adjustments between carriers in their joint relation and of requiring the application of the rule of right instead of power. We must see that through rates are fairly divided, and we must find a way to bring this about. We are not a court to dismiss for want of proof. We must ascertain the facts, and we have all necessary means. We must correct injustice when and where we find it and as we can. With one accord we have condemned the existing adjustment. We should now correct it. Commissioner Eastman has pointed a way, and we should follow it.

The effect of including the New England lines in ascertaining the values of the rail*away* in the group and the earnings needed, to make up the deficit below a fair return, as a basis for determining the amount and percentage of rate advance was to increase the percentage which was accorded to the other lines beyond what it would have been if only the values of their own lines had been considered. The other lines are enjoying not merely the increases that their own values entitled them to, but something additional resulting from
the value and deficit of the New England lines. Large sums
171 which the public pays, in rates and charges, because of the
value and deficit of the New England lines are going, not to them, but to the other lines in the group. The effect of this is to give to the other lines more than they are entitled to under the theory of the transportation act and to give to the New England lines correspondingly less than they should have. This wrongful diversion of earnings is represented by an ascertainable percentage of all earnings on through business, which are being withheld from the New England lines as a whole and given to the other lines in the group as a whole. This percentage should be taken away from the other lines and given to those in New England, and this can be done by a percentage readjustment of divisions within the group as between the lines east and west. The task involved is one of accounting, and if we would announce the principle the carriers could readily apply it. I have complete confidence in their ability and purpose to apply the rule that we announce. Commissioner Eastman has proposed a method which, though perhaps not exact, would immediately result in an adjustment much fairer than the existing basis and one which could be revised from time to time.

Beyond the direct unmerited contribution which the New England carriers have made and are making to the other lines, as the result of our application of the rate-making provisions of the transportation act (and which the New England lines are entitled to have restored to them) the record shows that the New England lines are entitled to increased divisions. We are required to take a group view of the carriers—to regard them as a group transportation machine—
and make an adjustment fair to all the parts. They are all
172 essential parts in order that the machine may function as
a whole in the handling of through business between the east and west. Each line thus essential to the through movement is entitled to have fair consideration given to all burdens of its operation.

A too-narrow meaning has been given to "service" as the term is

used in the transportation act in connection with the division of through rates. Everything which the carrier provides and does makes up the service rendered and which is to be considered in determining divisions. In carrying its many burdens, whatever they may be, in operating its transportation machine under the conditions which surround it, the carrier is rendering service which must be considered. In this case these burdens are the short hauls, the light train load, the complicated and expensive terminal arrangements, disadvantageous position respecting car hire, disproportionate burden of transportation of company fuel, and all factors of burden and expense which the carriers bear in order to furnish transportation. It is no answer to say that the conditions under which the New England lines operate are responsible for their poor showing. These are the very conditions which these lines are entitled to have allowance made for in determining what is a fair division of the compensation which the shipper pays for all that goes to make up the service rendered to him. These are the conditions which the transportation act says, in a way that is new, must be taken into consideration. As the burdens change, divisions should in common fairness change, and this is both the letter and spirit of the transportation act. As I see it, this is the heart of the transportation act.

It is the vital principle which must be given effect if carriers
173 as a whole are to succeed under the transportation act which limits earnings of the group to a fair return upon the properties, as a whole, considered as a group. It is the principle, which having regard to the shifting vicissitudes of carriers is, in the long run, essential to them all. It makes for general reliability of carrier prosperity and the stability of security values and guards the public interest. It provides the support and assures the justice which vindicate the firm hand of governmental regulation. We may and should construe the transportation act so as to effect this great result.

The requirement that all conditions under which a carrier operates, be taken into consideration in the division of earnings, does no violence to the rights of any carrier. Under the scheme of the transportation act, this requirement works out as a part of the rate-making plan, by which the needs of each carrier are supplied by the users of transportation and not by the other carriers. The earnings are allowed, through the rates prescribed, for the purpose of being put to such use, and they could not be allowed except for such purpose. The principle is only a recognition of the fact that all shippers, wherever they are, are vitally interested in the maintenance of efficient transportation everywhere and fairly may be charged with a share of the expense of such maintenance. The rate basis to be fixed from time to time provides for this. The carrier collecting the authorized charge acts not merely for itself but as the agency for the other carriers for which, under the law, the collection is authorized.

It is not necessary to construe, so that its application to this case will involve serious legal questions and the giving to one
174 carrier what is due to another, the requirement that in determining divisions we shall give consideration to "the amount of revenue required to pay their respective operating ex-

penses and a fair return on their railway property held for and used in the service of transportation." This provision means that service in all its aspects and everything the carrier does and provides shall be considered. Operating expenses and taxes must be paid to enable the transportat*h*ion machine to function. The other carriers, as well as the New England lines, are interested in maintaining their efficient operation. All earnings on through business are dependent upon the functioning of the New England lines. Because of the benefits all derive by virtue of the New England lines all should bear their part of the expense of operating them. Similarly a fair return to their owners on the value of the New England lines is not only just but necessary if these lines are to remain efficient. Shippers and other carriers, benefiting from the operating of the New England lines, should pay their share for the use of the New England facilities in through transportation. The value of a machine is an important element in determining just compensation for its use. In fact, the transportation act makes value the basic factor in determining what amounts shall be paid by shippers as compensation for transportation.

The value of the New England lines was considered and included by us in Ex Parte 74 in determining the aggregate amount to be paid by shippers for the use of the group transportation machine. The low earnings of the New England lines were considered in determining the amount of additional income to be raised to make up the required aggregate compensation. The shippers are now
175 paying on the basis of value of the New England lines and as compensation for their use. After including the value of these lines, to determine the aggregate amount to be raised as compensation for all of the lines in the group, we translated this amount into a percentage rate increase on all traffic moving within all parts of the group. The effect of this action by us was, because of the difference in traffic density, to transfer to the other lines a part of the compensation which, under the statute was to be raised, a*n*d which we started out to raise, for the New England lines. It is now our duty to correct this unsound result and direct these earnings back to the New England lines, where they belong under the statute and by virtue of our action which created them. To do less is not only to perpetuate gross injustice but to sanction a result which, it seems to me, is not in harmony with the spirit of the law. As I see it we are not asked to give to the New England lines something that belongs to the others, but to end a misappropriation in violation of law, by the other lines, of funds that belong to the New England lines. In fairness and justice the burdens of all carriers participating in through traffic, including a fair return to their owners upon their respective investments, should be considered in making an equitable division of the returns from their joint activities. The transportation act embodies these rules of simple justice. This act, recognizing that in the last analysis all enterprises involve only dealings between individuals and their relations to ane another, requires that the rules of common fairness as between man and mas shall be applied by railway public service corporations. We are the

nation's agency to enforce these rules. Acting in the nation's
176 power, we should not say we can not. I have so valued the transportation act, and have had such high hopes that I can not adopt the majority conception of our power and duty.

If it be true that we can not do complete justice immediately, this is no reason why we should not do partial justice. We can immediately, by a percentage readjustment, see that the New England lines receive what is now being diverted from them to the lines west as a result of their inclusion in determining the value of the properties in the group for rate-making purposes. We can require that the New England lines be given that part of the increased earnings of the group, which was authorized for them by us in Ex Parte 74, because of the lower earnings of these New England lines. We can correct the carriers' methods so that the scheme of the transportation act to raise moneys to compensate for the use of all parts of the group machine shall not be defeated, after the moneys have been raised, as a result of our action in fixing different percentage increases on freight and passenger traffic and of the different ratios as between freight and passenger traffic on the different lines. The record shows that before Ex Parte 74 was decided, it was appreciated that a general percentage increase throughout the group would not accomplish the results aimed at but would result in injustice to the New England lines, and that division changes would be necessary to accomplish justice. The plain duty of the carriers was to make these changes. It can be calculated that as a result of the recent world readjustment the New England lines have been required to carry a disproportionate burden in the matter of fuel costs, labor, and in
other respects. These increased burdens should be borne by
177 all lines equally and this disproportionate burden of the New England lines should be distributed over the others in the group, which can be done by a mere change in division percentages. Other principles can definitely be announced for prompt application by the carriers.

A percentage increase of all divisions to the New England lines is not offensive, because it would result in increasing certain divisions which are now too low. The divisions of rates are not in themselves the ultimate end. They are the means by which fair relations between the carriers are established in the aggregate. If the relation resulting from the divisions as a whole is fair, no harm will be done, if temporarily, particular divisions are made too high or too low. An adjustment unsound in detail may be required as a temporary expedient if in its general result it is fair and can be changed from time to time as consistency may require. Our report in Ex Parte 74 is a precedent for this course.

Nor are we impeded in acting in this case by the requirement of the statute that we prescribe divisions "to be received by the several carriers." Compliance with this provision is not difficult. By according a percentage increase to the New England lines and applying a percentage decrease to the other lines the result will be divisions prescribed by us to be received by the several carriers.

The representatives of the complainants adopted sound procedure

in seeking a readjustment of the relatioss as a whole. Conditions were serious and required a major operation. As efficient men charged with great responssibility they had no other course. Immediate justice, to which the New England lines were entitled, could not be obtained in any other way. A delay of justice in such
178 a case is a denial of justice. The display by the defendants in this case of the traditional and not unnatural attitude of carriers to protect their revenues has been sufficient to justify the complainants in their view that a short-cut course to general directions by us was necessary. Similiarly, we should be convinced that little will be accomplished promptly unless we announce the rules that are to guide the carriers.

CAMPBELL, *Commissioner*, dissenting:

I find myself in accord with the dissenting opinion of Commissioner Eastman. It seems to me that subdivision (6) of section 15 is clearly intended to cover just such a situation as exists in New England. The transportation act, 1920, gave to the Commission power and authority to group railroads into sections for rate-making purposes. It must of necessity follow that where rates are made by groups that some roads must receive larger returns than others. It must follow that there will be a great difference in "the amount of revenue required to pay their respective operating expenses, taxes," etc. It must have been in the minds of the legislators that rate making by groups would have the effect, that it would fatten some roads and have a tendency toward starving others in the same group. Now, I further believe that the legislators intended the act of 1920 to be administered in such a manner as to perpetuate private ownership and to provide a means whereby the Commission could sustain the weaker road, which obviously is the road which requires the aid more than the strong vigorous line, and therefore and for
179 that purpose subdivision (6) of section 15 was enacted in which the Commission is required when considering divisions to take into consideration things which never have been taken into consideration before. It seems to me that the act is very specific, and a careful reading of it must convince one that Congress had this very thought in mind. Subdivision (6) says in reference to prescribing divisions of joint rates:

> In so prescribing and determining the divisions of joint rates, fares and charges, the Commission *shall* give due consideration, among other things, *to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers* and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance *which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion* than another carrier of the joint rate, fare or charge. [Italics are mine.]

It will be seen by the careful wording of this section that it states that the Commission "shall." It does not say we may or may not, but it says we "shall" take into consideration "the amount of revenue required to pay their respective operating expenses," using the word respective, which clearly indicates that the needs of one carrier as compared with the needs of another carrier joining in the joint rate shall be considered. Then it requires us, ging back again to the word "shall" to consider "the importance to the public of the transportation services of such carriers," thus requiring us to consider the necessity of the public to be served with transportation, and clearly indicating, it seems to me, that we must consider the dire results which might happen should any railroad within that group be starved into bankruptcy. And then going back again to
180 the word "shall," they say that we shall consider "*any other* fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another arrier of the joint rate, fare, or charge," thus again requiring us to consider the requirements of one carrier as against another.

I am authorized by Commissioner McChord to say that he shares in these views.

By the Commission.

[SEAL.]

GEORGE B. McGINTY,
Secretary.

181 EXHIBIT E.

New England Divisions.

No. 11756.

BANGOR & AROOSTOOK RAILROAD COMPANY et al.

v.

ABERDEEN & ROCKFISH RAILROAD COMPANY et al.

Submitted November 29, 1921. Decided January 30, 1922.

Upon reargument findings in 62 I. C. C., 513, modified. The divisions of the joint class rates under consideration and of the similar joint commodity rates which divide on the class-rate basis, other than those in which complainant the Bangor & Aroostook Railroad Company participates, found unjust, unreasonable, and inequitable for the future to the extent that complainants' divisions thereof shall be less than 115 per cent of their present divisions except in cases where their present divisions are greater than the divisions accruing to defendants in which cases the aforesaid divisions are found unjust, unreasonable and inequitable for the future to the extent that complainants' divisions shall be less than their present divisions plus 15 per cent of the divisions now accruing to defendants.

Charles F. Choate, jr., for complainants.
H. W. Biklé and John C. Bills for defendants.

Report of the Commission on Reargument.

By the COMMISSION:

182 In our former report, 62 I. C. C., 513, we considered the complaint of certain steam railroads,[1] operating almost wholly within New England, that the divisions accruing to them out of the joint freight rates between points in New England on their lines and all other points in the United States and adjacent foreign countries were and are in violation of paragraph (4), section 1, and paragraph (6), section 15, of the interstate commerce act. We found that the record afforded no foundation upon which might rest a valid prescription by us of divisions, but that we could not disregard the conditions portrayed. Existing divisional arrange-

[1] Bangor & Aroostook Railroad Company; Boston & Maine *Maine* Railroad; Central New England Railway Company; Central Vermont Railway Company; Maine Central Railroad Company; New York, New Haven & Hartford Railroad Company; Rutland Railroad Company; and their subsidiaries and operated lines.

ments were the "antithesis of equality, uniformity, system, or order," and our conclusion, at pages 565-6, was:

Our duty would not be fully performed if we did not require a readjustment under which the conditions shall be relieved and demonstrably fair treatment accorded to all parties with respect to individual divisions. We are convinced, upon consideration of all the facts, that just, fair, and equitable divisions can not in many instances flow from the chaotic divisional arrangements to which we have adverted. We shall expect defendants and complainants to promptly submit to us proposed readjustments that will remove the inconsistencies portrayed of record and bring into conformity with the principles of law and equity expressed in the act the divisional arrangements, individually and as a whole, between complainants and defendants. To this end designation by the parties of appropriate communities of qualified personnel is recommended, and we shall expect the appointment of such committees to work jointly in revision of the divisions and to report to us at the end of 90 days after the date hereof the results of their efforts, together with statements of divisions upon which agreement has been reached, as well as those upon which there may not be complete agreement. Such statements may be accompanied by statements of fact and argument upon which the respective committee rely. Thereafter reports should be made to us at the end of each period of 60 days until final and complete disposition of the issues shall have been accomplished.

Subsequently, no readjustment having been accomplished,
183 complainants filed a petition for reargument, and this request was granted. It now becomes necessary to re-examine the subject and our former conclusions in the light of this reargument, which was held on November 29, 1921, and in the light of our own further consideration of the law and the evidence.

At pages 560-1 of our former report, we considered the provisions of paragraph (6), section 15, of the interstate commerce act, mentioned the various pertinent factors which we must consider in fixing divisions, and summarized our duty as follows:

We are bound under the statute to determine whether divisions properly in issue, justly, reasonably, and equitably compensate each carrier, relatively and per se, for the service it performs in the joint haul under joint rates, fares, and charges. Our determination must be predicated upon a consideration of all the various pertinent factors including the ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations. In the final analysis the just measure of divisions is the reasonable and equitable share of the revenue earned under the rates to be divided which each carrier should receive.

In view of our conclusions as to the facts, this was an adequate summary. But in Pittsburgh & W. Va. Ry. Co. v. P. L. E. R. R. Co., 61 I. C. C., 272, where we prescribed divisions, we stated the intent and purpose of the law as follows, at page 283:

We are not prevented by the provisions above quoted from taking into consideration any circumstances and conditions which we may deem to have weight in measuring the justice and reasonableness of divisions; but it is an intent clearly disclosed that we shall keep continually in view the public interest, the public need for a transportation system strong in all its parts, and the consequent necessity that carriers shall receive compensation fairly proportioned to the amount and character of the service which they perform and adequate to enable them to perform it efficiently.

184 Paragraph (6), section 15, of the interstate commerce act was a part of the transportation act, 1920. Both the legislative history and the provisions of that act make it clear that the purpose of Congress in this legislation was broader than the mere regulation of individual railroads. Congress was endeavoring to assure an effective transportation for the nation. The principle was recognized that the various carriers, while independently owned, are nevertheless to a large extent interdependent, and that they owe a duty to one another in the public interest.

Upon this foundation rests the provision with respect to divisions. As we said in Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co., supra, at page 282, "it recognizes clearly that divisions are affected with a public interest and are not a mere matter of bargain and trade between carriers." We there held that strategic advantage was not a factor to which we could give weight in fixing divisions, and that (page 283) "it was to avoid the unduly prejudicial effect of such strategic advantages upon the weaker carriers and the resulting impairment of transportation facilities upon which a substantial portion of the country depends that our powers over divisions were clarified and strengthened." The thought dominates the law, as it is now framed, that a paramount consideration in determining the equitable share of the joint revenue which any carrier shall receive must be the relative amount and cost of the service which it renders, and that mileage is not a gauge of relative cost where terminal service is performed or the transportation is carried on under other unfavorable conditions.

And Congress went further. It required us to give due consideration to—

185 the amount of revenue required to pay their respective expenses, taxes, and a fair return on their railway property held for and used in the service of transportation.

And also to—

the importance to the public of the transportation services of such carriers.

In our former report, at page 561, we paraphrased this requirement by saying that one of the pertinent factors to be considered is the "ability or disability of the several carriers to adequately, economically, and efficiently meet their common-carrier obligations"; and we also said that while the "public interest does not demand

nor does the statute either expressly or by reasonable implication provide that we may prescribe increased divisions of joint rates, fares, and charges to be received by certain carriers merely because other carriers participating in the joint rates, fares, or charges, considered as a whole, have not failed in so great a degree to earn a fair return upon the value of their property devoted to the public service," nevertheless "this is one factor which may be taken into consideration."

It is impossible to avoid the conclusion that Congress intended the relative financial needs of carriers, so far as these needs are legitimate and incident to the transportation service, to be given consideration in fixing divisions; and it is just and right that this should be so. The cost of service includes not only expenses of operation but taxes and the proper capital charges incident to the continued functioning of the property. We recognize this when we make allowance for density of traffic in the determination of reasonable rates. The share of overhead costs fairly attributable to
186 interchange traffic may likewise be greater, relatively, where this density is low. Moreover, the group plan of increasing rates which we followed in 1920 under the provisions of the new law necessarily results in inequality of return to the various carriers. Certain of them gain a larger reward than they would receive if it were practicable to fix rates for individual companies, while others have less. Yet all are parts of the national transportation system and must be adequately maintained if they are not to be abandoned. Due regard for the public interest demands that we give these fortuitous inequalities consideration in the fixing of divisions.

Summing up this phase of the matter, we are of the opinion that our power over divisions is founded upon the public interest; that the carriers are mutually dependent parts of the transportation system; that the public interest requires that all essential parts be maintained, so far as possible, in effective working condition; that the relative amount and cost under economical and efficient management of the service rendered is a prime factor in determining the fair and equitable share of joint revenue which each carrier shall receive; and that included in such cost is a due proportion of the burden of maintaining the financial integrity and credit of the carrier.

Complainants perform their part of the interchange service under less favorable conditions than their connections west of the Hudson River. They are terminal lines; their hauls are short; their traffic splits at different junction points and is diffused over many secondary and branch lines; their trainloads are necessarily relatively light; the density of their freight traffic is relatively low; and while
187 their investment per mile of road is low, their investment per revenue ton-mile is relatively high. Moreover, no coal mines are located on their rails, and fuel and many other supplies must be brought from considerable distances.

These unfavorable conditions are not new; they have long existed. They have been the cause, however, of a disproportionate increase in the burden upon the New England lines during the past three years.

This has come about from the extraordinary increases in wages and rates which have taken place within that period. It is inevitable that when freight rates are increased the carrier that brings its fuel and other supplies from a distance will suffer disproportionately. On coal alone and by the 40 per cent increase in freight rates alone complainants' costs were increased over $3,100,000 annually. It is also inevitable that when wages are increased the carrier that produces less ton-miles per unit of labor will suffer disproportionately. In this connection the following statistics for the year 1919 are of particular significance. They show percentages for the New England lines as compared with their connections in trunk line and central territories:

Car-miles per car-day	73.5 per cent.
Net ton-miles per car-day	60.8 per cent.
Net ton-miles per train-mile	57.8 per cent.
Net ton-miles per train-mile	57.4 per cent.
Net ton-miles per locomotive-day	55.9 per cent.
Cost of yard expenses per 1,000 net ton-miles	155.5 per cent.
Freight-train costs per $1,000 net ton-miles (wages)	184.1 per cent.
Freight-train costs per 1,000 net ton-miles (total)	176.7 per cent.

188 While labor is apparently not so large a factor, relatively, in the operations of the smaller northern New England lines as it is in the operations of the more complex and congested lines of southern New England, the northern lines have likewise suffered a disproportionate burden by reason of the increases in wages during the past three years to a standardized level, since the wages which they paid theretofore were below the average prevailing in the eastern group.

The divisional arrangements exhibited of record are built upon block bases, and in some cases constructive mileage is used or arbitraries are added. As pointed out in our former report, the blocking is often irregular, inconsistent, and illogical. Nevertheless, this system of dividing the joint rates of the New England lines and their western connections has existed for a great many years, and, so far as the record shows, without complaint until the extraordinary changes of the past three years. It *is* a reasonable assumption that until then it produced on the whole results which were fair.

The divisional arrangements shown apply to class rates, and generally to the commodity rates on articles which are classified. There is no evidence with respect to the divisions on coal and coke, fluid milk and its edible products, high explosives, or certain low-grade commodities moving short distances. Nor were divisions of the Bangor & Aroostook shown. Findings can not be made with respect to any of these divisions, and complainants do not now ask for such findings. On the other hand, defendants made no offer to prove that divisions in such cases are so favorable to complainants as to make up for deficiencies elsewhere, and the absence of evidence

in regard to the divisions of certain rates constitutes no reason
189 for failure to act upon the divisions as to which there is evidence.

With respect to the latter complainants submitted exhibits showing the divisions as between the New England roads and their western connections of several thousand joint rates applying between every division block of complainants other than the Bangor & Aroostook and representative points of traffic importance in all parts of the eastern group. One of the principal witnesses for defendants testified that the selection was illustrative and fair. Similar information was submitted by complainants with respect to various transcontinental rates and rates to and from the south, but no evidence was offered by defendants operating in southern or western territories. Before the extraordinary changes of the past three years the New England lines, because of the relatively unfavorable conditions which have already been mentioned, were clearly entitled to divisions materially larger than would be received under a mileage prorate. The evidence shows:

1. That in not a few cases the present New England divisions are less than would be received on a strict mileage basis; that they are generally larger; but that in many cases the excess is slight.

2. That in many cases the New England divisions are larger than would result from a 50-mile block plan, allowing an extra block of 50 miles to both the originating and the terminal carrier, although frequently they are smaller.

3. That in many cases the New England divisions are a smaller percentage of the corresponding local rates than are the divisions west of the Hudson, although by no means in all cases.

4. That in the instances where the New England lines are
190 allowed arbitraries before the division of the rates, these arbitraries have not been increased, notwithstanding the large percentage increases which have been made in the joint rates in recent years.

Having in mind that the 50-mile block plan is designed merely to afford some additional compensation to the originating and terminal carriers and makes no allowance whatever for operating disadvantages of the New England roads, apart from terminal service, there is nothing in this evidence which tends to overthrow the presumption that the divisional arrangements, prior to the recent extraordinary changes, produced fair results or that they were unduly favorable on the whole to the New England carriers. But if this presumption be accepted as a fair and reasonable conclusion from the facts of record, the further evidence with regard to the effect of the recent extraordinary changes leads inevitably to the conclusion that the scales which formerly hung approximately level as between the participating carriers are now tipped against New England roads and in favor of their western connections, because of the disproportionate results of these changes.

These conclusions are further supported by the evidence in regard to financial needs. In 1917 the railway operating income of the complainants amounted to 5.68 per cent upon their recorded railroad property investment, as compared with 5.63 per cent for the carriers in the remainder of the eastern group. In 1919 this had changed to 1.02 per cent for the New England lines and 1.84 per cent for the other carriers. For the first 10 months of 1920 the railway operating deficit of the New England roads amounted
191 to 3.10 per cent upon investment, while the similar deficit of the other eastern carriers was but 0.92 per cent. Finally, in the 12 months ended September 30, 1921, it appears that the deficit of the New England roads was 0.87 per cent upon investment, while the income of the other carriers amounted to 0.85 per cent. Thus the relative situation of the New England carriers has grown progressively worse, and it is a fact generally conceded that as a group they are in greater financial need than any other group of important carriers in the country. Moreover, in comparing the results from operations, it may be noted that the investment of the New England roads is relatively low per mile, and that there is evidence sustaining the soundness and validity of this investment while no similar evidence has been offered with reference to the other carriers.

In Increased Rates, 1920, 58 I. C. C., 220, we said, at page 247:

While the New England carriers are included in the eastern group and are subject to the percentage for that group, the evidence as to the disproportionate needs of the New England lines makes it desirable that the carriers give careful consideration to the divisions of joint rates accruing to these lines.

Nor does the evidence indicate that the financial needs of the New England lines are ascribable to the low level of their local freight rates or passenger fares. Both the class and commodity rates within New England were revised and increased in 1914 in a manner described in The Five Per Cent Case, 32 I. C. C., 325, as follows, at page 333:

The beneficent effect of an intelligent revision of rates is shown by the results obtained in New England while this proceeding was pending. The New England carriers sought approval in this case of an increase only in the rates on traffic moving between that ter-
192 ritory and other parts of official classification territory; they did not propose a general 5 per cent increase in their freight rates. Those carriers undertook instead a general rate revision, which has since been largely effected through friendly conferences with state commissions and with shippers and is now, by common consent of the shipping public and state officials, being brought to a conclusion on a basis that will afford those lines much larger additional net income than they could have secured through a 5 per cent increase in their freight rates.

The class rates were again sharply increased following our decision in Proposed Increases in New England, 49 I. C. C., 421, and

upon this special increase were superimposed the subsequent 25 per cent and 40 per cent increases. The evidence also shows that passenger traffic in New England is generally more profitable than freight traffic.

If this were a case involving a proposed general increase or reduction in rates, evidence of the character which has thus been summarized, indicating a general need for relief, would be deemed persuasive and as justifying a horizontal increase or reduction. It has been our practice in such cases to disregard the immediate effect upon particular rates and to afford relief without delay, leaving a door open for any necessary subsequent readjustments. Thus in Increased Rates, 1920, supra, we said, at page 243:

It would be desirable, if it were possible, to determine definitely the commodities, the sections of the country, and even the individual rates which can best bear the burden of increases, and the relationships of rates and differentials which will be disturbed by a percentage increase. This is precluded by the necessity of prompt action upon the main issues presented.

And later, at page 256, we said:

The rates to be established on the basis hereinbefore approved must necessarily be subject to such readjustments as the facts may warrant. It is conceded by the carriers that readjustments will be necessary.

193 In the cases involving intrastate rates which followed this general increase of 1920 it has been customary to supplement our general findings by the following reservation:

These findings are without prejudice to the right of the authorities of the state of * * *, or of any other party in interest to apply, in the proper manner, for a modification of our finding and order as to any specific intrastate rates, fares, or charges on the ground that the latter are not related to the interstate rates, fares, and charges in such a way as to contravene the provisions of the interstate commerce act.

Likewise, in Rates on Grain, Grain Products, and Hay, 64 I. C. C., 85, where percentage reductions in the rates on grain, grain products, and hay in the territory west of the Mississippi River were ordered, we were not deterred by the fact that such reductions might, and probably would, leave certain individual rates unreasonably low and others unreasonably high. In all such general rate cases we have realized and have held that if we were required to consider the justness and reasonableness of each individual rate, the law would in effect be nullified and the Commission reduced to a state of administrative paralysis.

Is there good reason why a similar policy should not be pursued when parts of rates, i. e., divisions, are in issue? Manifestly there is need, in the case now before us, for a thorough revision of divisional

arrangements upon a more logical and systematic basis. Manifestly, also, if a horizontal increase is made before this revision takes place, the result may be to leave certain divisions too high and others too low. But in this respect the results flowing from the general increases or reductions in rates which we have frequently authorized have been parallel. Moreover, any comprehensive revision upon a logical and systematic basis can be consummated only after
194 many months of labor and, very probably, only after further prolonged recourse to us. In the meantime the New England lines will be denied even a portion of the relief to which the record indicates that they are entitled and which the public interest clearly requires.

It has been suggested that when we authorize a horizontal increase in rates any shipper who may thereby be subjected, in a particular case, to the payment of unreasonable charges has the opportunity to obtain an award of reparation. But such an award can not be obtained, as a rule, without expense; and, furthermore, if similar general relief were granted in a divisions case, the opportunity would likewise be open to any individual defendant carrier to complain at once of its own divisions, and upon proper showing to obtain a revision dating back to the filing of its complaint. It may be noted that where a general reduction of rates is ordered, as in Rates on Grain, Grain Products, and Hay, supra, no similar opportunity is afforded. In Pittsburgh & W. Va. Ry. Co. v. P. & L. E. R. R. Co., supra, and in East Jersey R. R. & T. Co. v. C. R. R. Co. of N. J., 63 I. C. C., 80, we prescribed blanket increases of divisions without considering the separate divisions of the numerous defendant carriers.

Upon further consideration we are of the opinion that in a case involving divisions we may, when the public interest so requires, grant immediate relief subject to later readjustments, as we have done in cases involving general increases or reductions in rates. Otherwise, we shall fail to do substantial justice. The act requires a practical administration, and prompt action where that is necessary in the public interest. In our former report we recognized
195 the need for a revision of the divisions. The course of action suggested in that report having failed to produce prompt relief, we must adopt another, justified by the record, which will accomplish what Congress intended should be accomplished.

We are of the opinion, therefore, that some immediate relief may properly be granted to complainants, pending revision of the existing divisions upon a more logical and systematic basis; but that relief should be held with conservative limits. The New England lines are in part responsible for the *the* difficulties which the case presents because of their failure until recently to give the attention and study to their divisional arrangements of which these have plainly been in need. It remains to determine what form this immediate relief should take.

As already stated, evidence is lacking in regard to the divisional arrangements on certain specified classes of traffic. Our action will be restricted to the divisions of class rates and of the commodity rates which divide on the class-rate basis. With respect to the

divisions on traffic with Canadian lines we said, at page 516 of our former report:

With respect to commodities moving in foreign commerce, we are not asked to determine whether or not the divisions of the rates are just, reasonable, and equitable, but to require the cancellation of all joint rates and charges on such traffic or to authorize *such* other action as shall assure just, reasonable, and equitable compensation to the parties for their services in connection therewith. Nothing of record bears on the cancellation of the joint rates. With respect to the divisions which now accrue to the complainants out of the joint rates with their Canadian connections it should be observed that our jurisdiction inheres only in so far as the transportation takes place within the United States.

No reason has been shown for changing this conclusion.

196 In one of their exhibits complainants showed, for a constructive year ended October 31, 1919, the revenues accruing to them on so-called merchandise traffic interchanged with connecting lines and the revenue accruing to the other carriers participating in the same traffic. This covers traffic other than coal and coke. Eliminating interchange with Canadian lines, the total revenue on this merchandise traffic was $117,118,424, and of this amount $37,974,231, approximately one-third, accrued to complainants, and the remainder, $79,144,193, approximately two-thirds, to connections. In the presentation of their case in Increased Rates, 1920, supra, the carriers showed that prior to the increase of wages in 1920 the New England lines required an increase of about 47.5 per cent in their freight revenues to meet their needs, while the other carriers in the eastern group required but 28 per cent. It was testified that the increases which we subsequently authorized averaged about 37 per cent throughout the eastern group. If it had been possible to provide at that time that one-half, instead of one-third, of this increase on the merchandise interchange traffic should accrue to the New England lines because of their greater needs, they would have been benefited to the extent of about $7,500,000 additional per year, and no one, we think, would have regarded such a distribution of the increase as unfair under the circumstances. This amount, moreover, falls well below any estimate of the disproportionate burden which the New England lines have suffered in the past three years by reason of the extraordinary changes in rates and wages.

197 An increase of this amount in the divisions received by complainants would manifestly be of benefit to them far greater than the detriment to their western connections. To illustrate this: If the railway operating income of complainants had been increased by $7,500,000 in the 12 months ended September 30, 1921, their deficit of 0.87 per cent on investment would have been converted to an income of 0.04 per cent; while if the railway operating income of the other lines in the eastern group had been decreased by a like amount, the result would have been only a reduction in the amount earned on investment from 2.85 per cent to 2.76 per cent. It further develops that if the divisions now received by

complainants on this merchandise traffic were increased by 15 per cent, subject to the limitation hereinafter set forth, the result, as nearly as can be estimated, would be an increase in revenue of not exceeding $7,500,000.

We find, therefore, that the divisions of the joint class rates here under consideration and of the similar joint commodity rates which divide on the class-rate basis, other than those in which complainant, the Bangor & Aroostook Railroad Company, participates, will for the future be unjust, unreasonable, and inequitable to the extent that complainants' divisions thereof shall be less than 115 per cent of their present divisions, except in cases where their present divisions are greater than the divisions accruing to defendants, in which cases the aforesaid divisions will for the future be unjust, unreasonable, and inequitable to the extent that complainants' divisions shall be less than their present divisions plus 15 per cent of the divisions now accruing to defendants. We further find that the just, reasonable, and equitable divisions to be received by the several other
198 carriers participating in the aforesaid joint rates will for the future be the amounts remaining of the joint rates over and above the divisions so to be received by complainants, to be divided among them as they may agree, or, failing such agreement, as may be determined by us upon application therefor.

We enjoin upon complainants and defendants the necessity for proceeding as expeditiously as possible with the revision of divisions upon a logical and systematic basis which we recommended in our former report; and in order that delay in this process may be reduced to a minimum, we make the following additional recommendation:

Instead of attempting to cover the entire field at once, certain important traffic of comparatively simple characteristics should be selected and attention concentrated in the first instance upon the divisions of the rates upon such traffic in order that a suitable guide for the revision of other divisions may as soon as possible be provided. For example, the class rates applying between Boston and Chicago and other typical points of traffic importance in official territory might be selected, the rates on iron and steel from Pittsburgh, the rates on fresh meat from Chicago, and the rates on cement from producing points into New England. In making a study of such specific rates, every effort should be made to ascertain with such approximate accuracy as may prove possible the respective costs of the service performed by the various participating carriers, including in such costs a fair share of the charges attributable to taxes and a reasonable return upon the property. The other elements mentioned in the statute, in addition to mileage, should likewise
199 be considered. In case of inability to agree upon the divisions of such rates, the question may be presented to us in advance of the consideration of other specific divisions.

An appropriate order will be entered.

POTTER, *Commissioner,* concurring:

While my conception of the spirit and theory of the transportation act was explained in an opinion which I filed dissenting from the former report, I desire to associate with the dissenting opinions filed at the present time a statement making the issue distinct and clear.

The majority report now filed requires no taking from the respondents of anything that belongs to them. It proposes only to insure a disposition of joint earnings necessary to promote the purpose for which, under the transportation act, the earnings were authorized to be collected from shippers. The result of Ex Parte 74 was to establish anew, under the transportation act the basis of rates and fares, the carrier revenues to be enjoyed therefrom to be appropriated as the act contemplates. Increased collections from shippers were authorized. They were authorized primarily in the public interest to insure transportation throughout the nation. In our decision in Ex Parte 74 we could, within the law and with all propriety, then have directed a distribution of the increase in line with the needs of the various carriers if they were properly to serve the public interest. We perhaps should have done this. To have done so would not have been to take from any line anything that belonged to it. No carrier is entitled to earnings except as they fit the purpose for which the earnings are authorized. Railways, in furnish-
200 ing transportation, perform a governmental function and are subject to regulation and control. I understand the theory of the transportation act to be that the Congress lawfully may prescribe conditions upon which the performance of that function may be continued, not infringing upon the right to earn a fair return; that earnings allowed are in the nature of compensation for services and should be neither more nor less than fair; and that an important aim of the transportation act was to prevent certain carriers from receiving more than they are entitled to or need, and to insure that other carriers will receive their needs. The virtue of the act largely will depend on whether we, as the agency of the Congerss, can accomplish that stability of income essential to justify its limitation. To provide as a part of an authorization to collect a particular return that a portion of the collection shall be devoted to a particular purpose is, in substance, an authorization to the carrier to itself receive and enjoy the remainder, and does not infringe in any way upon any of its rights. It is fair and proper that all shippers interested in transportation should share in the burden of maintaining it. It is legal and proper that a carrier performing a governmental function be required, in addition to collecting the moneys to which it is entitled, to also serve as the agent to collect funds to which other carriers are entitled. Such is the spirit of the transportation act, as I understand it, which we are bound to apply, and such is the definition of our power to effectuate the act. What we might have done in Ex Parte 74 we may do now. The record shows a disproportion-
ate burden which conditions of recent years have placed upon
201 the New England carriers as a whole, as compared with the respondents as a whole. We authorized the raising of moneys

to carry that burden and the transportation act gives us the power and imposes the duty to see that those earnings go where they belong. The present report is necessary to carry out that purpose and prevent the misapplication to one use of funds which we authorized to be raised for another use. It affords a practical way of more nearly accomplishing justice. No other way is available. We can protect any particular carrier who brings to our attention a situation where the application of this method works hardship.

HALL, *Commissioner*, dissenting:

In expressing my profound dissent from most that is said and all that is decided in the present report it is unnecessary to reiterate what we said and found in our original report. That stands unrevoked and unshaken. The record before us is the same, and what was true then is true now. But the present majority, in clearing a path to the present conclusions and order, has developed a construction of the law, and of our functions under the law, which, if tenable would stamp it as no law because beyond the power of Congress. Whether or not the Congress can curb the strong and foster the weak under the guise of protecting the public interest, certainly it can not confer such power upon its agency. It can and does determine the regulations to which all common carriers by railroad engaged in interstate or foreign commerce, whether strong or weak, must conform in the public interest. It has prescribed certain standards for that regulation and has committed to this Commission, as its
202 agency, the application of those standards to the facts which may be developed of record upon complaint or in the course of inquiry. In thus administering and enforcing the interstate commerce act we can change what the carriers do or have done only as we find violation of that act, and in doing so must mete out an evenhanded justice to all parties before us, whatever their weakness or strength. It has not been committed to us to equalize the fortunes of carriers, of localities, or of men.

In the present proceeding we find some, not all, of the rail carriers in New England arrayed against practically all other rail carriers in the United States. Joint rates, class and commodity, from and to the south and the west, clear to the Gulf and the Pacific, are maintained by these New England carriers in connection with the defendants there, as well as with their nearer neighbors just across the Hudson. The Potomac, the Ohio, and the Mississippi are crossed as well as the Hudson. The defendants are in varying stages of prosperity and adversity. Some are in the hands of receivers. Some, like those in the south, have suffered far greater enhancement of their labor costs by federal wage increases than have the complainants. Yet all of these defendants, without exception, are here required to yield up to some New England roads shares greater by 15 per cent than those which they have agreed upon among themselves. No attempt is made to ascertain the effect upon defendants of this requirement, or to ascertain whether the shares remaining to them of the joint earnings will be just, reasonable, and equitable. There is

not even a perfunctory compliance with the mandates of the statute in that regard. The record affords no basis for it. The one
203 outstanding fact in the report is that in the opinion of the majority the complainants need the money. Perhaps the defendants need the money as much, and have a better right to it. On that we get little light and no facts on which to exercise a judgment. What are the rates to be divided, what is the important tonnage which moves at those rates and on which the important earnings are made, what are the respective services performed by the participants in effecting the movement, what are the cost and value of those services, and what the present divisions here condemned? The report gives no answer.

These divisions were determined by the parties themselves many years ago. Complainants make no attempt to show that they were cozened or coerced into agreeing upon them. On the contrary, they urge that until recent years their divisions, as a whole, were reasonable. They now claim that because conditions which have developed during the last few years have effected them seriously, their divisions, as a whole, are no longer reasonable. They show how these conditions have affected them but do not attempt to show how defendants have been affected by like or other conditions, or will be affected by decreased divisions. The burden is upon complainants. There is thus a failure of proof in essentials necessary to entitle complainants to such reformation of their contracts as is here required.

I can give no adherence to the view that we may increase or decrease divisions of joint rates simply to meet the varying financial needs of particular carriers or groups of carriers without regard to the amount, cost, or value of the services performed by the
204 several participating carriers, or the share of joint earnings which will remain to each after the change is made.

For the reasons indicated, as well as those stated in Commissioner Daniels' dissent, I adhere to the conclusions expressed in our original report.

DANIELS, *Commissioner*, dissenting:

Included in the conclusions reached in our original report are the following:

> We think that there is merit in the allegations of defendants that the proceeding is, in substance, an effort on the part of complainants to augment their revenues from traffic which they interchange with their connections without regard to the question of whether the present divisions of the various joint rates are fair and reasonable or consideration of the probable effects upon the revenues of the respective defendants. * * * [page 595.]
>
> We are bound under the statute to determine whether divisions properly in issue justly, reasonably, and equitably compensate each carrier, relatively and per se, for the service it performs in the joint haul under joint rates, fares, and charges. * * * [page 561.]
>
> Nor are we vested with discretion by virtue of which the mandate of section 1, paragraph (4), that divisions of joint rates, fares, and

charges as "between the carriers" participating in joint hauls shall be just, reasonable, and equitable might be made ineffective by administrative or judicial action. * * * [562.]

To treat the complainants "as a whole" or as a group would disregard the differences which obtain between the complainants individually.* * * [page 563.]

We are authorized to prescribe only just, reasonable, and equitable divisions "to be received by the several carriers." Full hearing and competent and relevant evidence are prerequisite. Any attempt to prescribe a blanket iincrease of divisions as here sought in the face of admissions and uncontradicted evidence that certain divisions are now just, reasonable, and equitable to complainants would override the plain mandate of law.

While we are urged to adjust the divisions "as a whole" on the presumption that the facts shown of record as to a part of the complainants are generally true as to all of them, and that they reflect the situation in New England, it is to be noted that some of the roads in New England have been excluded from the list of
205 complainants and included in the list of defendants. To so deal with the situation would not be treating the New England roads as a group. It would be taking from one road and giving to a less prosperous road, thus doing by indirection what the Congress deliberately and specifically refused to authorize us to do. The statutory provisions for recapture of excess earnings from individual carriers also clearly negatives the idea that the Congress contemplated or intended that all carriers in a group should so share in the aggregate earnings of the roads in the group that all would be upon an equality. * * * [page 565.]

Upon reargument nothing was presented which, in my opinion, tended in any wise to invalidate any of the conclusions set out above. I am therefore compelled to adhere to our original decision.

The present report of the majority is based, as I understand it, on the ground that despite the directions which we there issued for a readjustment of divisions, "no readjustment having been accomplished" and "the course of action suggested in that report having failed to produce prompt relief," some immediate relief may properly be granted to complainants. In passing, it is only fair to observe that while we enjoined upon the parties promptly to submit proposed readjustments that would remove the inconsistencies portrayed of record and to make to us progress reports, the first within 90 days, and subsequent reports every 60 days thereafter, we did not contemplate, nor was it reasonable to anticipate, that failure by this time to produce results would be evidence of dereliction warranting summary action by us in the premises. Indeed, the failure to effect results must be attributed in large part to the complainants themselves, who, though jointly persisting in their claim of increased divisions to themselves "as a whole," proceeded
206 promptly not to act in unison for a readjustment but to appoint each its separate committee to study and present a new plan of divisions in its individual interest.

The underlying thought of the present report seems to be that just as under paragraph (2) of section 15*a* of the interstate commerce act we may prescribe just and reasonable rates for the "carriers as a whole (or as a whole in each of such rate groups or territories as the Commission may from time to time designate)," we may in like fashion adjust divisions between carriers as a whole, under section 1, paragraph (4), whereby we are authorized to establish just, reasonable, and equitable divisions of joint rates as between the carriers participating therein; or under section 15, paragraph (6), by virtue of which we may by order prescribe just, reasonable, and equitable divisions to be received by the several carriers.

To me it seems that there is an insurmountable antithesis between prescribing rates for carriers as a whole, and establishing divisions btween the several carriers participating in joint rates. The fact that general rate levels as well as divisional arrangements may be affected by a public interest does not assimilate our powers in the respective premises. In short, I do not believe that the complainants have brought themselves within the terms of the sections of the statute which they invoke.

The same fundamental thought of the present report is that our action in cases involving a general rate increase may serve as a model for a similar proposed general divisional increase. The report says:

> 207 If this were a case involving a proposed general increase or reduction in rates, evidence of the character which has thus been summarized, indicating a general need for relief, would be deemed persuasive and as justifying a horizontal increase or reduction.

Some of the essential distinctions between the two situations are the following. First, a general rate increase involves all traffic. In this divisional case it is doubtful whether divisions on even half of the interchanged traffic are involved. Of some 34,000,000 tons, comprising the total, we must deduct 14,000,000 tons, covering coal and coke. We must deduct traffic on commodities not covered in this proceeding. We must deduct traffic interchanged with Canadian carriers. We must deduct the traffic of the Bangor & Aroostook. While the residue may not be ascertainable with precision, it may fairly be said that it does not cover more than half of the total interchanged traffic. Here we have a striking contrast to the various general horizontal increases, such as The Five Per Cent Case, The Fifteen Per Cent Case, general order No. 28, and Ex Parte 74, which covered all traffic.

Second, in the more recent general horizontal rate increases, there has in general been an admission by all parties that some general in-rease was justified. Here, on the contrary, the western connections of the complainants unitedly contest the propriety of this proposed general divisional increase. In certain instances they present persuasive evidence that they are justly entitled to greater divisions than those which they now receive. Instances in point will be cited later.

Third, while the authorization of horizontal rate increases con-

templates individual rate adjustments, and provides for reparation in such cases, the prescription of divisions, as contemplated by
208 the statute, has about it all the earmarks of finality. It must be based upon a positive and explicit finding that the divisions prescribed are or will be "the just, reasonable, and equitable divisions thereof to be received by the several carriers." The statute may be searched in vain for any authorization of a provisional fixation of divisions, whereas the present report concedes that the result of the proposed divisions "may be to leave certain divisions too high and others too low."

Fourth, where general horizontal rate increases have been permitted, the increases were superposed on a rate structure which in its elements has for years been under scrutiny by this Commission and large parts of which are our own creation. Here it is proposed to take a scheme of divisional adjustments, the origin of many of which is lost in obscurity, which the present report describes as "often irregular, inconsistent, and illogical" and *while* needs "a thorough revision of divisional arrangements upon a more logical and systematic basis." It is upon such a basis of divisions, self-condemned and condemned by the report itself, that a general percentage alteration is to be made. We have never sanctioned, and so far as I know, we have never been asked to sanction a horizontal rate increase upon a base that is admittedly impossible of even approximate justification.

The evidence of record contains not a few, but numerous instances where the present divisional bases seem grossly unfair to the complainants' connections. For example, from Holyoke, Mass.,
209 said to be the largest paper-producing point in New England, for a haul of 10 miles to the connecting carrier, the Boston & Albany, a subsidiary of the New York Central, the complainant receives on traffic to points west of Buffalo, N. Y., a division based upon a constructive mileage of 321 miles. This division will be increased under the present decision. Apparently so far as the New York Central and the New Haven are concerned, there are but two divisional blocks for the bulk of tonnage interchanged. For hauls averaging slightly over 40 miles, the New Haven draws divisions based on constructive mileage of 255 and 321 miles, respectively. These divisions under our order are to be increased. The divisions between the Boston & Maine and the New York Central via Troy are instanced in the record. Here it cannot be reasonably suggested that the terminal expenses in New York City are not as great as at Keene, N. H., Fitchburg, Mass., or Concord, Mass. Taking Keene for the first example: The distance to Troy is 122 miles, thence via the New York Central to New York City the distance is 146 miles. The present first-class rate is 74 cents, of which the Boston & Maine now draws 45.8 cents, the New York Central 28.2 cents. The order in this report will increase the former's division to 50 cents, leaving the New York Central 24 cents. The sixth-class rate between Keene and New York City is 24 cents. It divides at present between the two carriers, 14.5 cents to the Boston & Maine, 9.5 cents to the New

York Central. The order in this case augments the Boston & Maine division to 16 cents, leaving 8 cents to the New York Central.

Similar results are reached if we study the divisions from Fitchburg and Concord via Troy to New York City. The tran-
210 script (page 847) contains the following evidence by Mr. Eaton, for 33 years connected with the Boston & Maine:

Query. Now look at your rate to Concord. There again your haul is about the same as the New York Central haul.

Answer. From Concord the haul is greater.

Query. Yes. What do you think about the division of the 84-cent rate first class?

Answer. As to that particular rate I should say that that was a fair division.

Query. As it stands.

Answer. As it stands; yes, sir.

It would, of course, be misleading to cite the above as typical of the evidence generally. But it is proper to reproduce it, to indicate a not un-common admission that certain divisions are already fair to complainants. The finding and order of the report, however, find all existing divisions assailed herein, without exception, unjust, unreasonable, and inequitable, and require them all, without exception, to be further modified progressively in favor of the complainants.

There are certain carriers against which the order in this case runs as to whose divisions with any of the complainants there is no evidence of record. Among such carriers are the Wheeling & Lake Erie, the Pittsburgh & Lake Erie, the Hocking Valley, and the Toledo, St. Louis & Western. So far as official classification territory traffic is concerned complainants have stated, and nothing to the contrary is shown by defendants, that there is no evidence of any divisions upon such traffic between any of the complainants and the Norfolk & Western, the Chesapeake & Ohio, and the Western Maryland. It may be that a qualification of the foregoing should be made to the extent that evidence bearing on increased costs of transportation in New England relates to the propriety of all di-
211 visions between New England carriers and their connections.

From such examination as I have been able to make of this case, I am of opinion that in an unknown percentage of cases—possibly in a small majority of cases—the New England complainants could be shown on an adequate record to be entitled to greater divisions than they now receive from joint rates; and that in an unknown percentage of cases, possibly somewhat less than half, the connecting carriers west of the Hudson could be shown on an adequate record to be entitled to greater divisions than they now receive. The disposition of the matter made in the first report would have led to an equitable readjustment. However forcibly we may be impressed by the urgent financial necessities of some of the New England carriers, I cannot believe that a novel construction of the statute, without justification in its legislative origin and history, should be seized upon and employed to effect a diffusion and redistribution of

revenue among carriers in the eastern group, because, in our judgment, such redistribution is desirable, particularly when the outcome, if effectuated, would traverse the fundamental rights of connecting carriers and amount to a forced levy.

Commissioner Esch dissents.

212 EXHIBIT F.

Order.

No. 11756.

BANGOR & AROOSTOOK RAILROAD COMPANY; BOSTON & MAINE RAILROAD; Bridgton & Saco River Railroad Company; Central New England Railway Company; Central Vermont Railway Company; Maine Central Railroad Company Montpelier & Wells River Railroad; Rutland Railroad Company; Sandy River & Rangeley Lakes Railroad; St. Johnsbury & Lake Champlain Railroad; and the New York, New Haven & Hartford Railroad Company.

v.

Aberdeen & Rockfish Railroad Company; Abilene & Southern Railway Company; The Akron, Canton & Youngstown Railroad Company; Alabama & Mississippi Railroad Company; Alabama & Northwestern Railroad Company; Alabama & Vicksburg Railway Company; Alabama Central Railway; Alabama Central Railroad Company; Alabama, Florida & Gulf Railroad Company; Alabama Great Southern Railroad Company; The Alabama Northern Railway Company; Alabama, Tennessee & Northern Railroad Corporation; Albemarle Steam Navigation Company; Alcolu Railroad Company; The Algoma Central & Hudson Bay Railway Company; The Altamaha Navigation Company; Ann Arbor Railroad Company; Apalachicola Northern Railroad Company; Arcade & Attica Railroad Corporation; The Arizona & New Mexico Railway Company; Arizona Eastern Railroad Company; Arizona Southern Railroad Company; Ashland Coal & Iron Railway Company; Ashley & Dustin Steamer Line; The Atchison, Topeka & Santa Fe Railway Company; Atlanta & St. Andrews Bay Railway Company; Atlanta & West Point Railroad Company; Atlanta, Birmingham & Atlantic Railway Company; Atlantic & Carolina Railroad Company; Atlantic & Western Railroad Company; Atlantic & Yadkin Railway Company; Atlantic City Railroad Company; Atlantic Coast Line Railroad Company; Augusta Northern Railway;

Bachman Valley Railroad Company of Maryland; The Baltimore & Ohio Railroad Company; Baltimore & Ohio Chicago Terminal Railroad Company; Baltimore, Chesapeake & Atlantic Railway; Baltimore, Chesapeake & Atlantic River Lines; Bamberg, Ehrhardt & Waterboro Railway; Bath & Hammondsport Railroad Company; Bauxite & Northern Railway Company; The Beaumont, Sour Lake & Western Railway Company; The Belt Rail-

way Company of Chicago; Bennetsville & Cheraw Railroad Company; Bessemer & Lake Erie Railroad Company; Big Fork & International Falls Railway Company; Big Sandy & Cumberland Railroad Company; Birmingham & Northwestern Railway Company; Birmingham & Southeastern Railway Company; Birmingham Southern Railroad Company; Black Mountain Railway; Bloomsburg & Sullivan Railroad Company; Blue Ridge Railway Company; Bonlee & Western Railway Company; Boston & Albany Railroad Company (New York Central Railroad Company, lessee); Bowdon Railway Company; Boyne City, Gaylord & Alpena Railroad Company; Brownstone & Middletown Railroad Company; Brownwood North & South Railway Company; Buffalo & Susquehanna Railroad Corporation; Buffalo, Rochester & Pittsburgh Railway Company; Bullfrog-Goldfield Railroad Company; Bush Terminal Railroad Company; Butte, Anaconda & Pacific Railway Company;

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Callahan Line; Camas Prairie Railroad Company; Cambria & Indiana Railroad Company; Canadian National Railways; Canadian Pacific Car & Passenger Transfer Company; The Canadian Pacific Railway Company; Carolina & Northeastern Railroad Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; The Carolina & Yadkin River Railway Company; Carolina, Clinchfield & Ohio Railway; Carolina, Clinchfield & Ohio Railway of South Carolina; Catskill New York Steamboat Company, Limited; Central California Traction Company; Central Indiana Railway Company; Central New York Southern Railroad Corporation; Central of Georgia Railway Company; The Central Railroad Company of New Jersey; Central Railway Company of Arkansas; Central West Virginia & Southern Railroad Company; Charleston & Western Carolina Railway Company; Charlotte, Monroe & Columbia Railroad Company; Chatham, Wallaceburg & Lake Erie Railway Company; Chattahoochee Valley Railway Company; The Chesapeake & Ohio Railway Company; The Chesapeake & Ohio Railway Company of Indiana; Chesapeake Steamship Company; Chesapeake Western Railway; Chesterfield & Lancaster Railroad Company; Chestnut Ridge Railway Company; The Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company and W. J. Jackson, receiver; Chicago & Erie Railroad Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago & North Western Railway Company; Chicago & West Ridge Railroad; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Kalamazoo & Saginaw Railway Company; Chicago, Memphis & Gulf Railroad Company; Chicago, Milwaukee & Gary Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Peoria & St. Louis Railroad Company and Bluford Wilson and William Cotter, receivers; Chicago, Racine & Milwaukee Line; The Chicago, Rock Island & Gulf

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Railway Company; The Chicago, Rock Island & Pacific Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Chicago Short Line Railway Company; Chicago, Terre Haute & Southeastern Railway Company; Cincinnati, Burnside & Cumberland River Railway Company; Cincinnati, Georgetown & Portsmouth Railroad; The Cincinnati, Indianapolis & Western Railroad Company; The Cincinnati, Lebanon & Northern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Cleveland & Buffalo Transit Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Cliffside Railroad Company; Clinton & Oklahoma Western Railway Company; Clinton, Davenport & Muscatine Railway Company; Coal & Coke Railway Company; Cœur d'Alene & Pend d'Oreille Railway Company; Cœur d'Alene & St. Joe Transportation Company; The Colorado & Southeastern Railroad Company; The Colorado & Southern Railway Company; Columbia, Newberry & Laurens Railroad Company; Cooperstown & Charlotte Valley Railroad Company; Copper Range Railroad Company; Cornwall Railroad Company; Coudersport & Port Allegany Railroad Company; Cumberland & Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; Cumberland Valley & Martinsburg Railroad Company;

Dansville & Mount Morris Railroad Company and A. S. Murray, receiver; Danville & Western Railway Company; The Dayton & Union Railroad Company; The Dayton, Toledo & Chicago Railway Company; The Delaware & Hudson Company; Delaware & Northern Railroad Company; The Delaware, Lackawanna & Western Railroad Company; The Denison & Pacific Suburban Railway Company; The Denver & Rio Grande Railroad Company and A. R. Baldwin, receiver; Detroit & Cleveland Navigation Company; The Detroit & Huron Railway Company; Detroit & Mackinac Railway Company; Detroit & Toledo Shore Line Railroad Company; Detroit, Bay City & Western Railroad Company; Detroit, Toledo & Ironton Railroad Company; Doniphan, Kensett & Searcy Railway; Dover & South Bound Railroad Company; The Due West Railway Company; Duluth & Northeastern Railroad Company; Duluth, Missabe & Northern Railway Company; The Du-
215 luth, South Shore & Atlantic Railway Company; Duluth, Winnipeg & Pacific Railway Company; Durham & Southern Railway Company;

Eagles Mere Railroad Company and Edward Bailey, receiver; East Berlin Railway Company; East Carolina Railway; Eastern Carolina Transportation Company; Eastern Texas Railroad Company; The East Jordan & Southern Railroad Company; The East St. Louis Connecting Railway Company; East Tennessee & Western North Carolina Railroad Company; Edgemoor & Manetta Railway Company; Elberton & Eastern Railroad Company; El Dorado & Wesson Railway Company; Elgin, Joliet & Eastern Railway Company; Elkin & Alleghany Railway Company; El Paso & Southwestern Company; Emmitsburg Railroad Company; Erie Railroad Company; Erie & Michigan Railway & Navigation Com-

pany; Escanaba & Lake Superior Railroad Company; Essex Terminal Railway; Esquimalt & Nanaimo Railway Company; Evansville & Indianapolis Railroad Company and W. P. Kappes, receiver;

Fairchild & Northeastern Railway; The Fairport, Painesville & Eastern Railroad Company; Felicity & Bethel Railroad Company; Fernwood, Columbia & Gulf Railroad Company; Flint River & Northeastern Railroad Company; Florida East Coast Railway Company; Fonda, Johnstown & Gloversville Railroad Company; Fordyce & Princeton Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith & Western Railroad Company and A. L. Mills, receiver; Fort Wayne, Cincinnati & Louisville Railroad Company; The Fort Worth & Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Frankfort & Cincinnati Railway Company; Franklin & Pennsylvania Railroad Company; Fredericktown & Grand Lake Coal & Railway Company; Furen Boat Line;

Gainesville & Northwestern Railroad Company; Gainesville Midland Railway; Galesburg & Western Railroad and T. M. Cox, receiver; The Galveston, Harrisburg & San Antonio Railway Company; Garyville Northern Railroad Company; Genessee & Wyoming Railroad Company; Georgia & Florida Railway and W. R. Sullivan, John F. Lewis, and L. M. Williams, receivers; The Georgia, Florida & Alabama Railway Company; Georgia Northern Railway Company; Georgia Railroad; Georgia Southern & Florida Railway Company; Georgia Southwestern & Gulf Railroad Company; The Gettysburg & Harrisburg Railway Company; Glenmort &
216 Western Railway; Goodrich Transit Company; Grand Rapids & Indiana Railway Company; The Grand River Railway Company; Grand Trunk Pacific Railway Company; Grand Trunk Railway Company of Canada; Grand Trunk Western Railway Company; Great Lakes Transit Corporation; The Great Northern Railway Company; The Great Western Railway Company; Green Bay & Western Railroad Company; Greene County Railroad Company; Gulf & Ship Island Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Gulf, Florida & Alabama Railway Company and John T. Steele, receiver; Gulf, Mobile & Northern Railroad Company; Gulf, Texas & Western Railway Company;

The Hagerstown & Frederick Railway Company; Hampton & Branchville Railroad & Lumber Company; The Hanover Railway Company; Harriman & Northeastern Railroad Company; Hartford Eastern Railway Company; Hartwell Railway Company; Hawkinsville & Florida Southern Railway Company; Helena, Parkin & Northern Railway Company and H. M. Gregory, receiver; High Point, Randleman, Asheboro & Southern Railroad Company; Hill Steamboat Line; Hoboken Manufacturers' Railroad Company; The Hocking Valley Railway Company; Houston & Brazos Valley Railway Company and George C. Morris, receiver; Houston & Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East & West Texas Railway Company;

The Huntingdon & Broad Top Mountain Railroad & Coal Company;

Iberia & Vermilion Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway; Illinois Terminal Railroad Company; Illinois Traction Company; Indian Creek Valley Railway Company; Indiana Harbor Belt Railroad Company; Inland Empire Railroad; International & Great Northern Railway Company and James A. Baker, receiver; Interstate Car and Transfer Company; The Interstate Railroad Company; Ironton Railroad Company; The Isabell Line;

Kalamazoo, Lake Shore & Chicago Railway Company; The Kanawha & Michigan Railway Company; Kanawha & West Virginia Railroad Company; Kane & Elk Railroad Company; Kansas & Sidell Railroad Company; Kansas City & Memphis Railway Company and J. E. Felker and R. C. Bright, receivers; The Kansas City, Clinton & Springfield Railroad Company; Kansas City, Kaw Valley & Western Railway; The Kansas City, Mexico & Orient Railroad Company and William T. Kemper, receiver; Kansas City, Mexico & Orient Railway Company of Texas; Kansas City Northwestern Railroad and L. S. Cass, receiver; The Kansas City
217 Southern Railway Company; Kansas, Oklahoma & Gulf Railway; Kentucky & Tennessee Railway; Kentwood, Greensburg & Southwestern Railroad Company; Kewaunee, Green Bay & Western Railroad Company; The Kinston-Carolina Railroad Company; Knoxville, Sevierville & Eastern Railway Company; Kosciusko & Southeastern Railroad Company;

Lackawanna & Wyoming Valley Railroad Company; La Crosse & Southeastern Railway Company; Lake Charles & Northern Railroad Company; Lake Erie & Northern Railway; The Lake Erie & Western Railroad Company; Lake Erie, Franklin & Clarion Railroad Company; Lake Superior & Ishpeming Railway Company; Lancaster & Chester Railway Company; Laona & Northern Railway Company; Laurel Fork Railway Company; Laurenceville Branch Railroad; Lawndale Railway & Industrial Company; Laurinburg & Southern Railroad Company; The Lehigh & Hudson River Railway Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; Lehigh Valley Transportation Company; Liberty-White Railroad; Linville River Railway Company; Litchfield & Madison Railway Company; Little Kanawha Railroad Company; London & Port Stanley Railway; The Long Island Railroad Company; The Lorain & West Virginia Railway Company; The Lorain, Ashland & Southern Railroad Company; Los Angeles & Salt Lake Railroad Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Louisiana Southern Railway Company; Louisiana Western Railroad Company; Louisville & Nashville Railroad Company; Louisville & Wadley Railroad Company; Louisville Bridge & Terminal Railroad; Louisville, Henderson & St. Louis Railway Company; Louisville, New Albany & Corydon Railroad Company; The Lowville & Beaver River Railroad Company;

Macon & Birmingham Railway Company and H. W. Miller, receiver; Macon, Dublin & Savannah Railroad Company; Manchester & Oneida Railway Company; Manistee & Northeastern Railroad and The Michigan Trust Company, receiver; Manistique & Lake Superior Railroad Company; Marianna & Blountstown Railroad Company; Marinette, Tomahawk & Western Railroad Company; Marion Railway Corporation; Marion & Southern Railroad; Marquette & Bessemer Dock & Navigation Company; Maryland & Pennsylvania Railroad Company; Maryland, Delaware & Virginia Railway Company, The Maryland Electric Railways Company; Maxton, Alma & Southbound Railroad Company of
218 Alma, N. C.; Memphis, Dallas & Gulf Railroad Company; Merchants & Planters Steamboat Company; Meridian & Memphis Railway Company; The Michigan Central Railroad Company; Michigan Railroad Company; Michigan Railway Company; Middletown & Unionville Railroad Company; Midland Continental Railroad; Midland Railway Company; Midland Railway Company of Manitoba; Midland Valley Railroad Company; Milstead Railroad Company; Mineral Point & Northern Railway Company; Mineral Range Railroad Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, Northfield & Southern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Minnesota & International Railway Company; Mississippi Central Railroad Company; Missouri & Illinois Bridge & Belt Railroad Company; Missouri & North Arkansas Railroad Company and C. A. Phelan, receiver; Missouri, Kansas & Texas Railway Company and C. E. Schaff, receiver; Missouri, Oklahoma & Gulf Railway Company of Texas; Missouri Pacific Railroad Company; Mobile & Ohio Railroad Company; The Monongahela Railway Company; Montour Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Morgantown & Kingwood Railroad Company; Morristown & Erie Railroad Company; Mount Jewett, Kinzua & Riterville Railroad Company; Munising, Marquette & Southeastern Railway Company; Muscatine, Burlington & Southern Railroad Company;

Papierville Junction Railway Company; Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company; Natchez, Columbia & Mobile Railroad Company; Nevada-California-Oregon Railway; The Nevada Northern Railway Company; New Holland Boat Line; New Jersey & New York Railroad Company; New Jersey, Indiana & Illinois Railroad Company; New Mexico Central Railway Company; New Orleans & Northeastern Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany & Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; The New York & Long Branch Railroad Company; New York & Pennsylvania Railway Company; The New York Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; New York, Ontario & Western Railway Company; New York, Phila-

delphia & Norfolk Railroad Company; New York, Susquehanna & Western Railroad Company; Norfolk & Washington Steamboat Company; Norfolk & Western Railway Company; Norfolk Southern Railroad Company; Northampton & Bath Railroad Company; Northern Alabama Railway Company; Northern Navigation Company, Limited; The Northern Ohio Railway Company; Northern Pacific Railway Company; North River Line; Northwestern Pacific Railroad Company; Northwestern Railroad of South Carolina; Norton & Northern Railway; Norwood & St. Lawrence Railroad Company;

Ocilla Southern Railroad and M. W. Garbutt, J. A. J. Henderson, and J. F. Gray, receivers; Oconee Steamboat Company; Ohio Electric Railway Company; The Oklahoma, New Mexico & Pacific Railway Company; Ontario Car Ferry Company, Limited; The Orange & Northwestern Railroad Company; Orangeburg Railway and C. E. Denniston, Receiver; Oregon Electric Railway Company; Oregon Short Line Railroad Company; Oregon Trunk Railway Company; Oregon-Washington Railroad & Navigation Company;

Pacific Coast Railroad Company; Pacific Electric Railway Company; Pacific Great Eastern Railway Company; Pacific Northwest Traction Company; Pacific Steamship Company; Panhandle & Santa Fe Railway Company; Paris & Great Northern Railroad Company; Paris & Mount Pleasant Railroad Company and R. W. Wortham, receiver; The Peninsular & Occidental Steamship Company; The Pennsylvania Railroad Company; The Pennsylvania Railroad Company, Western Lines; Pennsylvania-Ontario Transportation Company; Peoria & Pekin Union Railway Company; Peoria Railway Terminal Company; Pere Marquette Line Steamers; Pere Marquette Railway Company; Perquimans River Line; Petaluma & Santa Rosa Railroad Company; Philadelphia & Reading Railway Company; Phillips & Ashmore Boat Line; The Pickens Railroad Company; Piedmont & Northern Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburg & Shawmut Railroad Company; Pittsburg & Susquehanna Railroad Company; The Pittsburgh & West Virginia Railway Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Pittsburgh, Lisbon & Western Railroad Company; The Pittsburg, Shawmut & Northern Railroad Company and F. S. Smith, receiver; Pontiac, Oxford & Northern Railroad Company; Port Chester Transportation Company; Portland Railway, Light & Power Company; Port Townsend & Puget Sound Railway; Prattsburg Railway Corporation; Prescott & Northwestern Railroad Company; Preston Railroad Company; Puget Sound Navigation Company; Pullman Railroad Company;

Quanah, Acme & Pacific Railway Company; Quebec Central Railway; The Quebec, Montreal & Southern Railroad Company; Quincy, Omaha & Kansas City Railroad Company;

Railway Valley Company; Raleigh & Charleston Railroad Company; Randolph & Cumberland Railway Company; The Rapid Railway Company; Rapid Railroad Company; Raritan River Railroad Company; Red River & Gulf Railroad Company; Reynoldsville & Falls Creek Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Rio Grande & Eagle Pass Railway Company; Rio Grande, El Paso & Santa Fe Railroad Company; Roanoke River Steamboat Company; Rockingham Railroad Company; Rock Island Southern Railway Company and T. H. Beacom and W. T. Abbott, receivers; Rome & Northern Railroad Company and D. B. Carson, receiver; Rocoe, Snyder & Pacific Railway Company; Rural Valley Railroad;

The St. Joseph & Grand Island Railway Company; St. Louis & Hannibal Railroad Company; The St. Louis, Brownsville & Mexico Railway Company; St. Louis, El Reno & Western Railway Company and Arthur L. Mills, receiver; St. Louis, Kennett & Southeastern Railroad Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis-San Francisco Railway Company; St. Louis-San Francisco & Texas Railway Company; St. Louis Southwestern Railway Company; St. Louis Transfer Railway Company; Sacramento Northern Railroad; The Salina Northern Railroad Company and H. C. Brent and P. W. Goebel, receivers; Salt Lake & Utah Railroad Company; San Antonio & Aransas Pass Railway Company; San Antonio, Uvalde & Gulf Railroad and A. R. Ponder, receiver; Sandersville Railroad Company; San Diego & Arizona Railway Company; Sand Springs Railway Company; San Francisco-Sacramento Railroad Company; Santa Maria Valley Railroad Company; Savannah & Atlanta Railway; Savannah & Statesboro Railway Company; Seaboard Air Line Railway Company; The Sharpsville Railroad Company and G. M. McIlvain, receiver; Shearwood Railway Company; Sheffield and Tionesta Railway Company; Shippers Navigation Company; Skagit River Navigation & Trading Company; Smithonia & Dunlap Railroad Company; South Brooklyn Railway Company; Southern Pacific Company; Southern Railway Company; Southern Railway Company in Mississippi; South
221 Georgia Railway Company; Spokane & British Columbia Railway; Spokane & Eastern Railway & Power Company; Spokane International Railway Company; Spokane, Portland & Seattle Railway Company; The Staten Island Rapid Transit Railway Company; Stewartstown Railroad Company; Stone Harbor Terminal Railroad Company; Sumter & Choctaw Railway Company; Sylvania Central Railway Company;

Tullulah Falls Railway Company; Temiskaming & Northern Ontario Railway; Tennessee & North Carolina Railroad Company and James G. Campbell, receiver; Tennessee, Alabama & Georgia Railroad Company; Tennessee Central Railroad Company and H. W. Stanley and W. H. McAllister, receivers; Tennessee, Kentucky & Northern Railroad Company; Tennessee Railway Company and

J. N. Baker, receiver; Terminal Railroad Association of St. Louis; Texarkana & Fort Smith Railway Company; Texas & New Orleans Railroad Company; The Texas & Pacific Railway Company and J. L. Lancaster and Charles L. Wallace, receivers; Texas City Terminal Company; The Texas Mexican Railway Company; Texas Midland Railroad; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Texas Southeastern Railroad Company; Texas State Railroad; Thornton & Alexandria Railway Company; The Thousand Islands Railway Company; Tidewater Southern Railway; Tionesta Valley Railway Company; The Toledo & Ohio Central Railway Company; Toledo, Peoria & Western Railway Company and C. N. Armstrong, receiver; Toledo, St. Louis & Western Railroad Company and W. L. Ross, receiver; Tonopah & Goldfield Railroad; Tonopah & Tidewater Railroad Company; The Toronto, Hamilton & Buffalo Railway Company; The Trinity & Brazos Valley Railway Company and John A. Hulen, receiver; The Tuckerton Railroad Company; Tucson, Cornelia & Gila Bend Railroad Company; Tug River & Kentucky Railroad Company; Tuskegee Railroad Company;

The Ulster & Delaware Railroad Company; Unadilla Valley Railway Company; Union & Glenn Springs Railroad Company; Union Pacific Railroad Company; Union Point & White Plains Railroad Company; Union Railway Company (Memphis); Union Railroad Company; United Railways Company; Utah-Idaho Central Railroad Company;

Valdosta, Moultrie & Western Railway Company; The Valley Railroad Company (of New York); Valley Railroad Company (of West Line, Pa.); The Valley Railroad Company of Virginia; Vancouver, Victoria & Eastern Railway & Navigation Company; Vicksburg, Shreveport & Pacific Railway Company; Virginia &
222 Carolina Southern Railroad Company; The Virginian Railway Company; Visalia Electric Railroad Company;

The Wabash, Chester & Western Railroad Company and J. Fred. Gilster, receiver; Wabash Railway Company; Wadley Southern Railway; Walla Walla Valley Railway Company; The Wanchese Line; Ware Shoals Railroad; Warren & Ouachita Valley Railroad Company; Warren, Johnsville & Saline River Railroad Company; Washington & Lincolnton Railroad Company; Washington & Old Dominion Railway; Washington & Vandemer Railroad Company; Washington, Baltimore & Annapolis Electric Railroad Company; Washington, Idaho & Montana Railway Company; Washington Run Railroad Company; Waterloo, Cedar Falls & Northern Railway Company; Watertown & Sioux Falls Railway Company; Waupaca-Green Bay Railroad Company; Waycross & Southern Railroad Company; Waycross & Western Railroad Company; Wellington & Powellsville Railroad Company; Western & Atlantic Railroad Company; Western Allegheny Railroad Company; Western Maryland Railway Company; The Western Pacific Railroad Company; The Western Railway of Alabama; Westfield Railroad Company; West Jersey & Seashore Railroad Company; West Shore Railroad Company (New York Central Railroad Company, lessee);

West Side Belt Railroad Company; West Virginia Northern Railroad Company; Wharton & Northern Railroad Company; The Wheeling & Lake Erie Railway Company; White Sulphur Springs & Yellowstone Park Railway Company; The Wichita Falls & Northwestern Railway and C. E. Schaff, receiver; The Wichita Valley Railway Company; Wiggins Ferry Company; Wildwood & Delaware Bay Short Line Railroad Company; Wilkes-Barre & Eastern Railroad Company; Wilkes-Barre & Hazelton Railway Company; Willamette Valley Southern Railway Company; Williamson & Pond Creek Railroad Company; Williamsport & North Branch Railroad Company and Edward Bailey, receiver; The Williams Valley Railroad Company; Wilmington, Brunswick & Southern Railroad Company; Windsor, Essex & Lake Shore Rapid Railway; The Winfield Railroad Company; Winston-Salem Southbound Railway Company; Wisconsin & Michigan Railroad Company; Wisconsin & Northern Railroad Company; Wrightsville & Tennille Railroad Company;

Yadkin Railway Company; Yakima Valley Transportation Company; The Yazoo & Mississippi Valley Railroad Company; The Youngstown & Ohio River Railroad Company; and the Zanesville & Western Railway Company.

223 This case being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report upon reargument, which said report containing its findings of fact and conclusions thereon is hereby referred to and made a part hereof:

It is ordered That of the joint class rates and of the joint commodity rates which are divided on the same bases as are applied to said joint class rates, for the transportation of property wholly within the confines of the United States in interstate or foreign commerce between points on defendants' lines and points on complainants' lines, other than the lines of complainant the Bangor & Aroostook Railroad Company, complainants shall receive, on and after March 1, 1922, as their just, reasonable, and equitable divisions of said joint rates, divisions which shall be not less than 115 per cent of their present divisions, except in cases where their present divisions are greater than the divisions now accruing to defendants, in which cases complainants shall receive, as their just, reasonable, and equitable divisions of said joint rates, divisions which shall be not less than their present divisions plus 15 per cent of the divisions now accruing to defendants.

It is further ordered, That the several other carriers participating therein shall receive as their just, reasonable, and equitable divisions of said joint rates, on and after March 1, 1922, the amounts remaining of said joint rates over and above the divisions so
224 to be received by complainants, to be divided among them in the same proportions as at present or otherwise as they may

agree, or failing such agreement, as may be determined by the Commission upon application therefor.

It is further ordered, That the defendants above named, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on and after March 1, 1922, and thereafter to abstain, from asking, demanding, collecting, or receiving divisions of said joint rates with complainants upon other bases than those above prescribed.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission,

[SEAL.] GEORGE B. McGINTY,
Secretary.

225 2. *Order to Show Cause.*

District Court of the United States for the Southern District of New York.

E. 23—226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

against

THE UNITED STATES OF AMERICA, Respondent.

Order to Show Cause.

Whereas, in the above entitled suit it has been made to appear from the verified petition presented to the undersigned, a Circuit Judge of the United States for the Second Circuit acting as District Judge for the Southern District of New York, that the petitioners therein are entitled to an interlocutory injunction suspending and restraining the enforcement, operation and execution of, and setting aside, a certain order made by the Interstate Commerce Commission as of the date of January 30th, 1922 as set forth in said petition, it is

Ordered, that the respondent herein, The United States of America, appear before the Honorable Charles M. Hough, United States Circuit Judge for the 2d Circuit and the Honorable
226 Martin T. Manton, United States Circuit Judge, for the 2d Circuit, and the undersigned, said judges having been called by the undersigned to his assistance to hear and determine said petition in accordance with the provisions of the Emergency Deficiency Appropriations Act of October 22nd, 1913, at U. S. Court & P. O. Bldg., Room 433 in the City of New York, on the 30 day of March, 1922, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard and then and there show cause before said Court and judges so convoked or so called together why the interlocutory injunction prayed for in said petition should not issue, and it is further

Ordered, that a copy of this order with the petition attached thereto be served upon the Attorney General of the United States and upon the Secretary of the Interstate Commerce Commission at least five days before said 30th day of March, 1922, as by said statute made and provided.

JULIUS M. MAYER,
United States Circuit Judge, Acting as District Judge.

Dated New York City, N. Y., this 20th day of March, 1922.

A True Copy.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

227 3. *Application, etc.*

District Court of the United States, Southern District of New York.

E. 23—226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Application for Leave to File Supplemental Petition.

Now come the petitioners and make application to this Honorable Court for leave to file a supplemental petition in the accompanying form alleging material facts occurring since the filing of the original petition.

Dated, March 31, 1922.

WALTER C. NOYES,
R. W. BARRETT,
JOHN C. BILLS,
GEORGE F. BROWNELL,
CLYDE BROWN,
N. S. BROWN,
A. H. ELDER,
W. S. JENNEY,
H. T. NEWCOMB,
CHARLES C. PAULDING,
Solicitors for Petitioners.

228 At a Term of the District Court of the United States for the Southern District of New York Held in the United States Court and Post Office Building, in the City of New York, on the First Day of April, 1922.

Present:

Honorable Charles M. Hough,
Circuit Judge.
Honorable Martin T. Manton,
Circuit Judge.
Honorable Julius M. Mayer,
Circuit Judge, acting as District Judge.

E. No. 23—226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.,
Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

On reading and filing the application of the petitioners in the above entitled suit and on motion of Walter C. Noyes, one of their solicitors, it is

Ordered, that the petitioners have leave to file a supplemental petition in the form accompanying the application alleging material facts occurring since the filing of the original petition.

C. M. HOUGH,
Circuit Judge.
MARTIN T. MANTON,
Circuit Judge.
JULIUS M. MAYER,
Circuit Judge, Acting as District Judge.

Consented to:
WALKER D. HINES.

Filed Apl. 1, 1922.

A True Copy.

[Seal of District Court of the United States, Southern District of N. Y.]

ALEX. GILCHRIST, JR.,
Clerk.

229 4. *Supplemental Petition and Exhibit.*

District Court of the United States, Southern District of New York.

E. 23—226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Supplemental Petition.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

The petitioners in the above entitled suit, by leave of the Court first had and obtained, present and file this their supplemental petition and thereupon complain and say:

I.

That this suit to set aside, annul, and suspend, and to enjoin the enforcement, operation and execution of an order of the Interstate Commerce Commission was commenced by the filing of the petition on March 20, 1922.

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II.

That the order of the Commission above referred to was made as of the date of January 30, 1922 in a proceeding before said Commission relating to the divisions of joint railroad rates (which proceeding is referred to and described in the petition); that said order was made to take effect March 1, 1922, and a copy thereof is attached to the petition marked Exhibit F and made a part thereof.

III.

That since the filing of said original petition and the commencement of this suit, to wit: On March 28, 1922, the Interstate Commerce Commission made an amended order in said proceeding, effective April 1, 1922, a copy of which is annexed to this supplemental petition, marked Exhibit G, and made a part hereof.

IV.

That each and every objection stated in the original petition to the validity of the order of said Commission of January 30, 1922 (Exhibit F) applies with equal force to said amended order (Exhibit

G), except that the objection is not made that said last named order was made effective less than thirty days from the date of service upon the parties affected thereby.

V.

That all the statements in the original petition in this suit are, with the exception stated in the last preceding paragraph, ap-
231 plicable to said amended order and to a suit to enjoin its enforcement and to set it aside and such statements are adopted and made a part of this supplemental petition but without setting them forth herein.

Wherefore, the petitioners pray that they have the same relief as a to said amended order of the Interstate Commerce Commission as is prayed for in the original petition against said order of January 30, 1922 and as if such amended order had been made before the commencement of this suit and all the matters and things charged in the original petition with respect to prior order had been charged with respect to it, and in, in particular, the petitioners pray for permanent and interlocutory injunctions setting aside, annulling, suspending and enjoining the enforcement, operation and execution of said amended order and for such other and further relief as the circumstances of the case may require.

WALTER C. NOYES,
R. W. BARRETT,
JOHN C. BILLS,
GEORGE F. BROWNELL,
CLYDE BROWN,
N. S. BROWN,
A. H. ELDER,
W. S. JENNEY,
H. T. NEWCOMB,
CHARLES C. PAULDING,
Solicitors for Petitioners.

231½ STATE OF NEW YORK,
County of New York, ss:

W. H. Williams, being duly sworn, says that he is Vice President of The Delaware and Hudson Company, one of the petitioners in the above entitled cause; that he has read the foregoing petition and knows the contents thereof, and that said supplemental petition is true of his own knowledge.

[SEAL.] W. H. WILLIAMS.

Subscribed and sworn to before me this first day of April, 1922.

CELIA SACHS,
Notary Public, New York County, No. 2.

New York Register No. 4119.
My commission expires Mch. 30, 1924.

232 *Amended Order.*

At a General Session of the Interstate Commerce Commission Held at Its Office, in Washington, D. C., on the 28th Day of March, A. D. 1922.

No. 11756.

BANGOR & AROOSTOOK RAILROAD COMPANY; BOSTON & MAINE RAILroad; Bridgton & Saco River Railroad Company; Central Vermont Railway Company; Maine Central Railroad Company; Montpelier & Wells River Railroad; Rutland Railroad Company; Sandy River & Rangeley Lakes Railroad; St. Johnsbury & Lake Champlain Railroad; and the New York, New Haven & Hartford Railroad Company

v.

Aberdeen & Rockfish Railroad Company; Abilene & Southern Railway Company; The Akron, Canton & Youngstown Railroad Company; Alabama & Mississippi Railroad Company; Alabama & Northwestern Railroad Company; Alabama & Vicksburg Railway Company; Alabama Central Railway; Alabama Central Railroad Company; Alabama, Florida & Gulf Railroad Company; Alabama Great Southern Railroad Company; The Alabama Northern Railway Company; Alabama, Tennessee & Northern Railroad Corporation; Albemarle Steam Navigation Company; Alcolu Railroad Company; The Algoma Central & Hudson Bay Railway Company; Altamaha Navigation Company; Ann Arbor Railroad Company; Apalachicola Northern Railroad Company; Arcade & Attica Railroad Corporation; The Arizona & New Mexico Railway Company; Arizona Eastern Railroad Company; Arizona Southern Railroad Company; Ashland Coal & Iron Railway Company; Ashley & Dustin Steamer Line; The Atchison, Topeka & Santa Fe Railway Company; Atlanta & St. Andrews Bay Railway Company; Atlanta & West Point Railroad Company; Atlanta, Birmingham & Atlantic Railway Company; Atlantic & Carolina Railroad Company; Atlantic & Western Railroad Company; Atlantic & Yadkin Railway Company; Atlantic City Railroad Company; Atlantic Coast Line Railroad Company; Augusta Northern Railway;

Bachman Valley Railroad Company of Maryland; The Baltimore & Ohio Railroad Company; Baltimore & Ohio Chicago Terminal Railroad Company; Baltimore, Chesapeake & Atlantic Railway; Baltimore, Chesapeake & Atlantic River Lines; Bamberg, Ehrhardt & Waterboro Railway; Bath & Hammondsport Railroad Company; Bauxite & Northern Railway Company; The Beaumont, Sour Lake & Western Railway Company; The Belt Railway Company of Chicago; Bennetsville & Cheraw Railroad Company; Bessemer & Lake Erie Railroad Company; Big Fork & International Falls Railway Company; Big Sandy & Cumberland Railroad Company; Birmingham & Northwestern Railway Com-

pany; Birmingham & Southeastern Railway Company; Birmingham Southern Railroad Company; Black Mountain Railway; Bloomsburg & Sullivan Railroad Company; Blue Ridge Railway Company; Bonlee & Western Railway Company; Boston & Albany Railroad Company (New York Central Railroad Company, lessee); Bowdon Railway Company; Boyne City, Gaylord & Alpena Railroad Company; Brownstone & Middletown Railroad Company; Brownwood North & South Railway Company; Buffalo & Susquehanna Railroad Corporation; Buffalo, Rochester & Pittsburgh Railway Company; Bullfrog-Goldfield Railroad
233 Company; Bush Terminal Railroad Company; Butte, Anaconda & Pacific Railway Company;

Callahan Line; Camas Prairie Railroad Company; Cambria & Indiana Railroad Company; Canadian National Railways; Canadian Pacific Car & Passenger Transfer Company; The Canadian Pacific Railway Company; Carolina & Northeastern Railroad Company; Carolina & Northwestern Railway Company; Carolina & Tennessee Southern Railway Company; The Carolina & Yadkin River Railway Company; Carolina, Clinchfield & Ohio Railway; Carolina, Clinchfield & Ohio Railway of South Carolina; Catskill New York Steamboat Company, Limited; Central California Traction Company; Central Indiana Railway Company; Central New York Southern Railroad Corporation; Central of Georgia Railway Company; The Central Railroad Company of New Jersey; Central Railway Company of Arkansas; Central West Virginia & Southern Railroad Company; Charleston & Western Carolina Railway Company; Charlotte, Monroe & Columbia Railroad Company; Chatham, Wallaceburg & Lake Erie Railway Company; Chattahoochee Valley Railway Company; The Chesapeake & Ohio Railway Company; The Chesapeake & Ohio Railway Company of Indiana; Chesapeake Steamship Company; Chesapeake Western Railway; Chesterfield & Lancaster Railroad Company; Chestnut Ridge Railway Company; The Chicago & Alton Railroad Company; Chicago & Eastern Illinois Railroad Company and W. J. Jackson, receiver; Chicago & Erie Railroad Company; Chicago & Illinois Midland Railway Company; Chicago & Illinois Western Railroad; Chicago & North Western Railway Company; Chicago & West Ridge Railroad; Chicago, Burlington & Quincy Railroad Company; Chicago Great Western Railroad Company; Chicago, Indianapolis & Louisville Railway Company; Chicago Junction Railway Company; Chicago, Kalamazoo & Saginaw Railway Company; Chicago, Memphis & Gulf Railroad Company; Chicago, Milwaukee & Gary Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Chicago, Peoria & St. Louis Railroad Company and Bluford Wilson and William Cotter, receivers; Chicago, Racine & Milwaukee Line; The Chicago, Rock Island & Gulf Railway Company; The Chicago, Rock Island & Pacific Railway Company; Chicago, St. Paul, Minneapolis & Omaha Railway Company; Chicago Short Line Railway Company; Chicago, Terre Haute & Southeastern Railway Company; Cincinnati, Burnside & Cumberland River Railway Company; Cincinnati, Georgetown &

Portsmouth Railroad; The Cincinnati, Indianapolis & Western Railroad Company; The Cincinnati, Lebanon & Northern Railway Company; The Cincinnati, New Orleans & Texas Pacific Railway Company; The Cleveland & Buffalo Transit Company; The Cleveland, Cincinnati, Chicago & St. Louis Railway Company; Cliffside Railroad Company; Clinton & Oklahoma Western Railway Company; Clinton, Davenport & Muscatine Railway Company; Coal & Coke Railway Company; Cœur d'Alene & Pend d'Oreille Railway Company; Cœur d'Alene & St. Joe Transportation Company; The Colorado & Southeastern Railroad Company; The Colorado & Southern Railway Company; Columbia, Newberry & Laurens Railroad Company; Cooperstown & Charlotte Valley Railroad Company; Copper Range Railroad Company; Cornwall Railroad Company; Coudersport & Port Allegany Railroad Company; Cumberland & Pennsylvania Railroad Company; The Cumberland Valley Railroad Company; Cumberland Valley & Martinsburg Railroad Company;

234 Dansville & Mount Morris Railroad Company and A. S. Murray, receiver; Danville & Western Railway Company; The Dayton & Union Railroad Company; The Dayton, Toledo & Chicago Railway Company; The Delaware & Hudson Company; Delaware & Northern Railroad Company; The Delaware, Lackawanna & Western Railroad Company; The Denison & Pacific Suburban Railway Company; The Denver & Rio Grande Railroad Company and A. R. Baldwin, receiver; Detroit & Cleveland Navigation Company; The Detroit & Huron Railway Company; Detroit & Mackinac Railway Company; Detroit & Toledo Shore Line Railroad Company; Detroit, Bay City & Western Railroad Company; Detroit, Toledo & Ironton Railroad Company; Doriphan, Kensett & Searcy Railway; Dover & South Bound Railroad Company; The Due West Railway Company; Duluth & Northeastern Railroad Company; Duluth, Missabe & Northern Railway Company; The Duluth, South Shore & Atlantic Railway Company; Duluth, Winnipeg & Pacific Railway Company; Durham & Southern Railway Company;

Eagles Mere Railroad Company and Edward Bailey, receiver; East Berlin Railway Company; East Carolina Railway; Eastern Carolina Transportation Company; Eastern Texas Railroad Company; The East Jordan & Southern Railroad Company; The East St. Louis Connecting Railway Company; East Tennessee & Western North Carolina Railroad Company; Edgemoor & Manetta Railway Company; Elberton & Eastern Railroad Company; El Dorado & Wesson Railway Company; Elgin, Joliet & Eastern Railway Company; Elkin & Alleghany Railway Company; El Paso & Southwestern Company; Emmitsburg Railroad Company; Erie Railroad Company; Erie & Michigan Railway & Navigation Company; Escanaba & Lake Superior Railroad Company; Essex Terminal Railway; Esquimalt & Nanaimo Railway Company; Evansville & Indianapolis Railroad Company and W. P. Kappes, receiver;

Fairchild & Northeastern Railway; The Fairport, Painesville & Eastern Railroad Company; Felicity & Bethel Railroad Company; Fernwood, Columbia & Gulf Railroad Company; Flint River & Northeastern Railroad Company; Florida East Coast Railway Company; Fonda, Johnstown & Gloversville Railroad Company; Fordyce & Princeton Railroad Company; Fort Dodge, Des Moines & Southern Railroad Company; Fort Smith & Western Railroad Company and A. L. Mills, receiver; Fort Wayne, Cincinnati & Louisville Railroad Company; The Fort Worth & Denver City Railway Company; Fort Worth & Rio Grande Railway Company; Frankfort & Cincinnati Railway Company; Franklin & Pennsylvania Railroad Company; Frederickton & Grand Lake Coal & Railway Company; Furen Boat Line;

Gainesville & Northwestern Railroad Company; Gainesville
235 Midland Railway; Galesburg & Western Railroad and T. M. Cox, receiver; The Galveston, Harrisburg & San Antonio Railway Company; Garyville Northern Railroad Company; Genesee & Wyoming Railroad Company; Georgia & Florida Railway and W. R. Sullivan, John F. Lewis, and L. M. Williams, receivers; The Georgia, Florida & Alabama Railway Company; Georgia Northern Railway Company; Georgia Railroad; Georgia Southern & Florida Railway Company; Georgia Southwestern & Gulf Railroad Company; The Gettysburg & Harrisburg Railway Company; Glenmort & Western Railway; Goodrich Transit Company; Grand Rapids & Indiana Railway Company; The Grand River Railway Company; Grand Trunk Pacific Railway Company; Grand Trunk Railway Company of Canada; Grand Trunk Western Railway Company; Great Lakes Transit Corporation; The Great Northern Railway Company; The Great Western Railway Company; Green Bay & Western Railroad Company; Greene County Railroad Company; Gulf & Ship Island Railroad Company; Gulf, Colorado & Santa Fe Railway Company; Gulf, Florida & Alabama Railway Company and John T. Steele, receiver; Gulf, Mobile & Northern Railroad Company; Gulf, Texas & Western Railway Company;

The Hagerstown & Frederick Railway Company; Hampton & Branchville Railroad & Lumber Company; The Hanover Railway Company; Harriman & Northeastern Railroad Company; Hartford Eastern Railway Company; Hartwell Railway Company; Hawkinsville & Florida Southern Railway Company; Helena, Parkin & Northern Railway Company and H. M. Gregory, receiver; High Point, Randleman, Asheboro & Southern Railroad Company; Hill Steamboat Line; Hoboken Manufacturers' Railroad Company; The Hocking Valley Railway Company; Houston & Brazos Valley Railway Company and George C. Morris, receiver; Houston & Shreveport Railroad Company; Houston & Texas Central Railroad Company; The Houston East & West Texas Railway Company; The Huntingdon & Broad Top Mountain Railroad & Coal Company;

Iberia & Vermilion Railroad Company; Illinois Central Railroad Company; Illinois Northern Railway; Illinois Terminal Railroad

Company; Illinois Traction Company; Indian Creek Valley Railway Company; Indiana Harbor Belt Railroad Company; Inland Empire Railroad; International & Great Northern Railway Company and James A. Baker, receiver; Interstate Car and Transfer Company; The Interstate Railroad Company; Ironton Railroad Company; The Isabell Line;

Kalamazoo, Lake Shore & Chicago Railway Company; The Kanawha & Michigan Railway Company; Kanawha & West Virginia Railroad Company; Kane & Elk Railroad Company; Kansas & Sidell Railroad Company; Kansas City & Memphis Railway Company and J. E. Felker and R. C. Bright, receivers; The Kansas City, Clinton & Springfield Railroad Company; Kansas City, Kaw Valley & Western Railway; The Kansas City, Mexico & Orient Railroad Company and William T. Kemper, receiver; Kansas City, Mexico & Orient Railway Company of Texas; Kansas City Northwestern Railroad and L. S. Cass, receiver; The Kansas City Southern Railway Company; Kansas, Oklahoma & Gulf Railway; Kentucky & Tennessee Railway; Kentwood, Greensburg & Southwestern Railroad Company; Kewaunee, Green Bay & Western Railroad Company; The Kinston-Carolina Railroad Company; Knoxville, Sevierville & Eastern Railway Company; Kosciusko & Southeastern Railroad Company;

Lackawanna & Wyoming Valley Railroad Company; La Crosse & Southeastern Railway Company; Lake Charles & Northern Railroad Company; Lake Erie & Northern Raliway; The Lake
236 Erie & Western Railroad Company; Lake Erie, Franklin & Clarion Railroad Company; Lake Superior & Ishpeming Railway Company; Lancaster & Chester Railway Company; Laona & Northern Railway Company; Laurel Fork Railway Company; Laurenceville Branch Railroad; Lawndale Railway & Industrial Company; Laurinburg & Southern Railroad Company; The Lehigh & Hudson River Railway Company; Lehigh & New England Railroad Company; Lehigh Valley Railroad Company; Lehigh Valley Transportation Company; Liberty-White Railroad; Linville River Railway Company; Litchfield & Madison Railway Company; Little Kanawha Railroad Company; London & Port Stanley Railway; The Long Island Railroad Company; The Lorain & West Virginia Railway Company; The Lorain, Ashland & Southern Railroad Company; Los Angeles & Salt Lake Railroad Company; Louisiana & Arkansas Railway Company; Louisiana Railway & Navigation Company; Louisiana Southern Railway Company; Louisiana Western Railroad Company; Louisville & Nashville Railroad Company Louisville & Wadley Railroad Company; Louisville Bridge & Terminal Railroad; Louisville, Henderson & St. Louis Railway Company; Louisville, New Albany & Corydon Railroad Company; The Lowville & Beaver River Railroad Company;

Macon & Birmingham Railway Company and H. W. Miller, receiver; Macon, Dublin & Savannah Railroad Company; Manchester & Oneida Railway Company; Manistee & Northeastern Railroad and The Michigan Trust Company, receiver; Manistique & Lake

Superior Railroad Company; Marianna & Blountstown Railroad Company; Marinette, Tomahawk & Western Railroad Company; Marion Railway Corporation; Marion & Southern Railroad; Marquette & Bessemer Dock & Navigation Company; Maryland & Pennsylvania Railroad Company; Maryland, Delaware & Virginia Railway Company; The Maryland Electric Railways Company; Maxton, Alma & Southbound Railroad Company of Alma, N. C.; Memphis, Dallas & Gulf Railroad Company; Merchants & Planters Steamboat Company; Meridian & Memphis Railway Company; The Michigan Central Railroad Company; Michigan Railroad Company; Michigan Railway Company; Middletown & Unionville Railroad Company; Midland Continental Railroad; Midland Railway Company; Midland Railway Company of Manitoba; Midland Valley Railroad Company; Milstead Railroad Company; Mineral Point & Northern Railway Company; Mineral Range Railroad Company; The Minneapolis & St. Louis Railroad Company; Minneapolis, Northfield & Southern Railway; Minneapolis, St. Paul & Sault Ste. Marie Railway Company; Minnesota & International Railway Company; Mississippi Central Railroad Company; Missouri & Illinois Bridge & Belt Railroad Company; Missouri & North Arkansas Railroad Company and C. A. Phelan, receiver; Missouri, Kansas & Texas Railway Company and C. E. Schaff, receiver; Missouri, Oklahoma & Gulf Railway Company of Texas; Missouri Pacific Railroad Company; Mobile & Ohio Railroad Company; The Monongahela Railway Company; Montour Railroad Company; Morgan's Louisiana & Texas Railroad & Steamship Company; Morgantown & Kingwood Railroad Company; Morristown & Erie Railroad Company; Mount Jewett, Kinzua & Riterville Railroad Company; Munising, Marquette & Southeastern Railway Company; Muscatine, Burlington & Southern Railroad Company;

Napierville Junction Railway Company; Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company; Natchez, Columbia & Mobile Railroad Company; Nevada-Cali-
237 fornia-Oregon Railway; The Nevada Northern Railway Company; New Holland Boat Line; New Jersey & New York Railroad Company; New Jersey, Indiana & Illinois Railroad Company; New Mexico Central Railway Company; New Orleans & Northeastern Railroad Company; New Orleans Great Northern Railroad Company; New Orleans, Natalbany & Natchez Railway Company; New Orleans, Texas & Mexico Railway Company; The New York & Long Branch Railroad Company; New York & Pennsylvania Railway Company; The New York Central Railroad Company; The New York, Chicago & St. Louis Railroad Company; New York, Ontario & Western Railway Company; New York, Philadelphia & Norfolk Railroad Company; New York, Susquehanna & Western Railroad Company; Norfolk & Washington Steamboat Company; Norfolk & Western Railway Company; Norfolk Southern Railroad Company; Northampton & Bath Railroad Company; Northern Alabama Railway Company; Northern Navi-

gation Company, Limited; The Northern Ohio Railway Company; Northern Pacific Railway Company; North River Line; Northwestern Pacific Railroad Company; Northwestern Railroad of South Carolina; Norton & Northern Railway; Norwood & St. Lawrence Railroad Company;

Ocilla Southern Railroad and M. W. Garbutt, J. A. J. Henderson, and J. F. Gray, receivers; Oconee Steamboat Company; Ohio Electric Railway Company; The Oklahoma, New Mexico & Pacific Railway Company; Ontario Car Ferry Company, Limited; The Orange & Northwestern Railroad Company; Orangeburg Railway and C. E. Denniston, Receiver; Oregon Electric Railway Company; Oregon Short Line Railroad Company; Oregon Trunk Railway Company; Oregon-Washington Railroad & Navigation Company;

Pacific Coast Railroad Company; Pacific Electric Railway Company; Pacific Great Eastern Railway Company; Pacific Northwest Traction Company; Pacific Steamship Company; Panhandle & Santa Fe Railway Company; Paris & Great Northern Railroad Company; Paris & Mount Pleasant Railroad Company and R. W. Wortham, receiver; The Peninsular & Occidental Steamship Company; The Pennsylvania Railroad Company; The Pennsylvania Railroad Company, Western Lines; Pennsylvania-Ontario Transportation Company; Peoria & Pekin Union Railway Company; Peoria Railway Terminal Company; Pere Marquette Line Steamers; Pere Marquette Railway Company; Perquimans River Line; Petaluma & Santa Rosa Railroad Company; Philadelphia & Reading Railway Company; Phillips & Ashmore Boat Line; The Pickens Railroad Company; Piedmont & Northern Railway Company; The Pittsburgh & Lake Erie Railroad Company; The Pittsburg & Shawmut Railroad Company; Pittsburg & Susquehanna Railroad Company; The Pittsburgh & West Virginia Railway Company; Pittsburgh, Chartiers & Youghiogheny Railway Company; The Pittsburgh, Cincinnati, Chicago & St. Louis Railroad Company; The Pittsburgh, Lisbon & Western Railroad Company; The Pittsburg, Shawmut & Northern Railroad Company and F. S. Smith, receiver; Pontiac, Oxford & Northern Railroad Company; Port Chester Transportation Company; Portland Railway, Light & Power Company; Port Townsend & Puget Sound Railway; Prattsburg Railway Corporation; Prescott & Northwestern Railroad Company; Preston Railroad Company; Puget Sound Navigation Company; Pullman Railroad Company;

Quanah, Acme & Pacific Railway Company; Quebec Central Railway; The Quebec, Montreal & Southern Railroad Company; Quincy, Omaha & Kansas City Railroad Company;

238 Rahway Valley Company; Raleigh & Charleston Railroad Company; Randolph & Cumberland Railway Company; The Rapid Railway Company; Rapid Railroad Company; Raritan River Railroad Company; Red River & Gulf Railroad Company; Reynoldsville & Falls Creek Railroad Company; Richmond, Fredericksburg & Potomac Railroad Company; Rio Grande & Eagle Pass Railway Company; Rio Grande, El Paso

& Santa Fe Railroad Company; Roanoke River Steamboat Company; Rockingham Railroad Company; Rock Island Southern Railway Company and T. H. Beacom and W. T. Abbott, receivers; Rome & Northern Railroad Company and D. B. Carson, receiver; Rocoe, Snyder & Pacific Railway Company; Rural Valley Railroad;

The St. Joseph & Grand Island Railway Company; St. Louis & Hannibal Railroad Company; The St. Louis, Brownsville & Mexico Railway Company; St. Louis, El Reno & Western Railway Company and Arthur L. Mills, receiver; St. Louis, Kennett & Southeastern Railroad Company; St. Louis Merchants Bridge Terminal Railway Company; St. Louis-San Francisco Railway Company; St. Louis-San Francisco & Texas Railway Company; St. Louis Southwestern Railway Company; St. Louis Transfer Railway Company; Sacramento Northern Railroad; The Salina Northern Railroad Company and H. C. Brent and P. W. Goebel, receivers; Salt Lake & Utah Railroad Company; San Antonio & Aransas Pass Railway Company; San Antonio, Uvalde & Gulf Railroad and A. R. Ponder, receiver; Sandersville Railroad Company; San Diego & Arizona Railway Company; Sand Springs Railway Company; San Francisco-Sacramento Railroad Company; Santa Maria Valley Railroad Company; Savannah & Atlanta Railway; Savannah & Statesboro Railway Company; Seaboard Air Line Railway Company; The Sharpsville Railroad Company and G. M. McIlvain, receiver; Shearwood Railway Company; Sheffield and Tionesta Railway Company; Shippers Navigation Company; Skagit River Navigation & Trading Company; Smithonia & Dunlap Railroad Company; South Brooklyn Railway Company; Southern Pacific Company; Southern Railway Company; Southern Railway Company in Mississippi; South Georgia Railway Company; Spokane & British Columbia Railway; Spokane & Eastern Railway & Power Company; Spokane International Railway Company; Spokane, Portland & Seattle Railway Company; The Staten Island Rapid Transit Railway Company; Stewartstown Railroad Company; Stone Harbor Terminal Railroad Company; Sumter & Choctaw Railway Company; Sylvania Central Railway Company;

Tullulah Falls Railway Company; Temiskaming & Northern Ontario Railway; Tennessee & North Carolina Railroad Company and James G. Campbell, receiver; Tennessee, Alabama & Georgia Railroad Company; Tennessee Central Railroad Company and H. W. Stanley and W. H. McAllister, receivers; Tennessee, Kentucky & Northern Railroad Company; Tennessee Railway Company and J. N. Baker, receiver; Terminal Railroad Association of St. Louis; Texarkana & Fort Smith Railway Company; Texas & New Orleans Railroad Company; The Texas & Pacific Railway Company and J. L. Lancaster and Charles L. Wallace, receivers; Texas City Terminal Company; The Texas Mexican Railway Company; Texas Midland Railroad; Texas, Oklahoma & Eastern Railroad Company; Texas Short Line Railway Company; Texas Southeastern

Railroad Company; Texas State Railroad; Thornton & Alexandria Railway Company; The Thousand Islands Railway Company; Tide water Southern Railway; Tionesta Valley Railway Company; The Toledo & Ohio Central Railway Company; Toledo, Peoria & Western Railway Company and C. N. Armstrong, receiver; Toledo, St. Louis & Western Railroad Company and W. L. Ross, re-
239 ceiver; Tonopah & Goldfield Railroad; Tonopah & Tidewater Railroad Company; The Toronto, Hamilton & Buffalo Railway Company; The Trinity & Brazos Valley Railway Company and John A. Hulen, receiver; The Tuckerton Railroad Company; Tucson, Cornelia & Gila Bend Railroad Company; Tug River & Kentucky Railroad Company; Tuskegee Railroad Company;

The Ulster & Delaware Railroad Company; Unadilla Valley Railway Company; Union & Glenn Springs Railroad Company; Union Pacific Railroad Company; Union Point & White Plains Railroad Company; Union Railway Company (Memphis); Union Railroad Company; United Railways Company; Utah-Idaho Central Railroad Company;

Valdosta, Moultrie & Western Railway Company; The Valley Railroad Company (of New York); Valley Railroad Company (of West Line, Pa.); The Valley Railroad Company of Virginia; Vancouver, Victoria & Eastern Railway & Navigation Company; Vicksburg, Shreveport & Pacific Railway Company; Virginia & Carolina Southern Railroad Company; The Virginia Railway Company; Visalia Electric Railroad Company;

The Wabash, Chester & Western Railroad Company and J. Fred. Gilster, receiver; Wabash Railway Company; Wadley Southern Railway; Walla Walla Valley Railway Company; The Wanchese Line; Ware Shoals Railroad; Warren & Ouachita Valley Railroad Company; Warren, Johnsville & Saline River Railroad Company; Washington & Lincolnton Railroad Company; Washington & Old Dominion Railway; Washington & Vandemere Railroad Company; Washington, Baltimore & Annapolis Electric Railroad Company; Washington, Idaho & Montana Railway Company; Washington Run Railroad Company; Waterloo, Cedar Falls & Northern Railway Company; Watertown & Sioux Falls Railway Company; Waupaca-Green Bay Railroad Company; Waycross & Southern Railroad Company; Waycross & Western Railroad Company; Wellington & Powellsville Railroad Company; Western & Atlantic Railroad Company; Western Allegheny Railroad Company; Western Maryland Railway Company; The Western Pacific Railroad Company; The Western Railway of Alabama; Westfield Railroad Company; West Jersey & Seashore Railroad Company; West Shore Railroad Company (New York Central Railroad Company, lessee); West Side Belt Railroad Company; West Virginia Northern Railroad Company; Wharton & Northern Railroad Company; The Wheeling & Lake Erie Railway Company; White Sulphur Springs & Yellowstone Park Railway Company; The Wichita Falls & Northwestern Railway and C. E. Schaff, receiver; The Wichita Valley Railway Company; Wiggins Ferry Company; Wildwood

& Delaware Bay Short Line Railroad Company; * Wilkes-Barre & Hazelton Railway Company; Williamette Valley Southern Railway Company; Williamson & Pond Creek Railroad Company; Williamsport & North Branch Railroad Company and Edward Bailey, receiver; The Williams Valley Railroad Company; Wilmington Brunswick & Southern Railroad Company; Windsor, Essex & Lake Shore Rapid Railway; The Winfield Railroad Company; Winston-Salem Southbound Railway Company; Wisconsin & Michigan Railroad Company; Wisconsin & Northern Railroad Company; Wrightsville & Tennille Railroad Company;

Yadkin Railway Company; Yakima Valley Transportation Company; The Yazoo & Mississippi Valley Railroad Company; The Youngstown & Ohio River Railroad Company; and the Zanesville & Western Railway Company.

240 Good cause appearing therefor:

It is ordered, That the Order herein made at a General Session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 30th day of January, A. D. 1922, is hereby amended so as to read as follows:

This case being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made and filed a report upon reargument, which said report containing its findings of fact and conclusions thereon is hereby referred to and made a part hereof:

It is ordered, That of the joint class rates and of the joint commodity rates which are divided on the same bases as are applied to said joint class rates, for the transportation of property wholly within the confines of the United States in interstate or foreign commerce between points on defendants' lines, other than the lines of the Boston & Albany Railroad Company of which the New York Central Railroad Company is lessee, hereinafter referred to as the Boston & Albany Railroad, and points on complainants' lines, other than the lines of complainant the Bangor & Aroostook Railroad Company, complainants shall receive, on and after April 1, 1922, as their just, reasonable and equitable divisions of said joint rates, divisions which shall be not less than 115 per cent of their present divisions, except in cases where their present divisions or their present divisions plus those of the Boston & Albany Railroad where it participates in the traffic as an intermediate carrier, are greater than the divisions now accruing to defendants, other than the Boston & Albany Railroad, in which cases complainants shall receive, as their just, reasonable and equitable divisions of said joint rates, divisions which shall be not less than:

* Wilkes-Barre & Eastern Railroad Company.

(1) Where the Boston & Albany Railroad does not so participate in the traffic, their present divisions plus 15 per cent of the present divisions accruing to such defendants.

(2) Where the Boston & Albany Railroad does so participate in the traffic, their present divisions plus that proportion of such 15 per cent as their present divisions may be of the total of their present divisions and the division of the Boston & Albany Railroad.

It is further ordered, That the several carriers, other than the complainants and the Boston & Albany Railroad participating therein shall receive as their just, reasonable and equitable divisions of said joint rates on and after April 1, 1922, the amounts remaining of said joint rates after deducting the divisions so to be received by complainants and the present divisions of the Boston & Albany Railroad where it participates in the traffic, such amounts so remaining to be divided among such other carriers in the same ratio
241 as their present divisions respectively bear to each other, or otherwise as they may agree, or failing such agreement, as may be determined by the Commission upon application therefor.

It is further ordered, That the defendants above named, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on and after April 1, 1922, and thereafter to abstain, from asking, demanding, collecting, or receiving divisions of said joint rates with complainants upon other bases than those above prescribed. Provided that the first month for which the carriers will be required to state and make their current accounts and settlements in accordance with this order will be the month of June, 1922; the accounts and settlements for the months of April and May 1922, in accordance with this order, may be stated and made at any time up to August 1, 1922.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission:

[SEAL.]

GEORGE B. McGINTY,
Secretary.

242 5. *Petition of Intervention of A. A. R. R. Co. et al.*

District Court of the United States, Southern District of New York.

E. 23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Petition of Intervention.

To the Honorable the Judges of the District Court of the United States for the Southern District of New York:

Your petitioners, Ann Arbor Railroad Company, a corporation of the State of Michigan; Atlantic City Railroad Company, a corporation of the State of New Jersey; Bauxite & Northern Railway Company, a corporation of the State of Arkansas; Bloomsburg & Sullivan Railway Company, a corporation of the State of Pennsylvania; Buffalo & Susquehanna Railroad Corporation, a corporation of the State of Pennsylvania; Buffalo, Rochester & Pittsburg Railway Company, a corporation of the States of New York and Pennsylvania; Chesapeake & Ohio Railway Company of Indiana, a corporation of the State of Indiana; Chicago & Illinois Midland Railroad Company, a corporation of the State of Illinois; Chicago & Eastern Illinois
243 Railroad Company, a corporation of the State of Illinois; Evansville & Indianapolis Railroad Company, a corporation of the State of Indiana; Cooperstown & Charlotte Valley Railroad Company, a corporation of the State of New York; Bluford Wilson and William Cotter, Receivers of the Chicago, Peoria & St. Louis Railroad Company, a corporation of the State of Illinois; The Cleveland & Buffalo Transit Company, a corporation of the State of Detroit & Cleveland Navigation Company, a corporation of the State of Michigan; East Jordan & Southern Railroad Company, a corporation of the State of Michigan; Chicago, Kalamazoo & Saginaw Railway Company, a corporation of the State of Michigan; Fonda, Johnstown & Gloversville Railroad Company, a corporation of the State of New York; Fort Wayne, Cincinnati & Louisville Railroad Company, a corporation of the State of Indiana; Gettysburg & Harrisburg Railway Company, a corporation of the State of Pennsylvania; The New York, Susquehanna & Western Railroad Company, a corporation of the States of New Jersey and Pennsylvania; New York & Long Branch Railroad Company, a corporation of the State of New Jersey; Theodore M. Cox, Receiver of the Galesburg & Western Railroad Company, a corporation of the State of Illinois; Grand River Railway Company, a corporation of the State of Hocking Valley Railway Company, a corporation of the State of Ohio; Illinois Terminal Rail-

road Company, a corporation of the State of Illinois; Missouri
244 & Illinois Bridge & Belt Railroad Company, a corporation of the State of Missouri; Marquette & Bessemer Dock & Navigation Company, a corporation of the State of New Jersey; Minneapolis & St. Louis Railroad Company, a corporation of the State of Iowa; Northern Ohio Railway Company, a corporation of the State of Ohio; New Jersey, Indiana & Illinois Railroad Company, a corporation of the State of Indiana; St. Louis & Hannibal Railroad Company, a corporation of the State of Missouri; Tuckerton Railroad Company, a corporation of the State of New Jersey; Ulster & Delaware Railroad Company, a corporation of the State of New York; Unadilla Valley Railway Company, a corporation of the State of New York; Virginian Railway Company, a corporation of the State of Virginia; Wabash, Chester & Western Railroad Company, a corporation of the State of Illinois; Western Maryland Railway Company, a corporation of the States of Maryland and Pennsylvania; Wharton & Northern Railroad Company, a corporation of the State of New Jersey; Edward Bailey, Receiver of the Williamsport & North Branch Railroad Company, a corporation of the State of Pennsylvania, respectfully show unto your Honors:

I.

That your petitioners are corporations organized and existing under the laws of the States above indicated and are railroad corporations
245 engaged in interstate and intrastate commerce and subject to the provisions of the Interstate Commerce Act.

II.

That this suit is brought to restrain the enforcement, operation and execution of and to set aside in whole and part the report, findings and order of the Interstate Commerce Commission in a proceeding had before said Commission upon the complaint of the Bangor and Aroostook Railroad Company and others praying that the Commission should prescribe divisions as between the complainants and other railroad companies named as defendants therein including these petitioners; all as by the petition in this suit appears.

III.

That all the allegations in the petition filed in this suit in behalf of the petitioners therein apply to the petitioners in this petition of intervention, and they are similarly situated to said petitioners, and said original petition is brought by the petitioners therein in behalf of themselves and such other corporations as have an interest therein and may by proper proceedings become parties thereto.

IV.

That your petitioners have a substantial interest in the subject matter of this suit by reason of the fact that if the enforcement,
246 operation and execution of said report, findings and order are not restrained and the same are not set aside your petitioners will lose large sums of money and will suffer irreparable damage for which they have no adequate remedy at law.

Wherefore, your petitioners pray that they be granted leave to appear as parties petitioners in the above entitled suit and be represented therein by counsel.

WALTER C. NOYES,
R. W. BARRETT,
JOHN C. BILLS,
GEORGE F. BROWNELL,
CLYDE BROWN,
N. S. BROWN,
A. H. ELDER,
W. S. JENNEY,
H. T. NEWCOMB,
CHARLES C. PAULDING,
Solicitors for Intervening Petitioners.

STATE OF NEW YORK,
County of New York, ss:

W. H. Williams, being duly sworn, says that he is Vice President of the Cooperstown & Charlotte Valley Railroad Company, one of the petitioners in the above entitled cause; that he has read the foregoing petition and knows the contents thereof; that said petition is true of his own knowledge except as to those matters alleged on information and belief; and that as to those matters he believes it to be true.

——.

Subscribed and sworn to before me this 29th day of March, 1922.

——.

247 7. *Petition of Intervention, of G. I. M. et al.*

District Court of the United States for the Southern District of New York.

In Equity.

No. 23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

against

THE UNITED STATES OF AMERICA, Respondent.

SIRS:

Please take notice that on the 30th day of March 1922 at 10.30 o'clock in the forenoon or as soon thereafter as counsel can be heard, the undersigned will move before Hon. Charles M. Hough and Hon. Martin T. Manton United States Circuit Judges for the Second Circuit, and Hon. Julius M. Mayer United States Circuit Judge for the Second Circuit acting as District Judge, all sitting in accordance with the provisions of the Emergency Deficiency Appropriations Act of October 22, 1913, at Room #433 in the United States Court and Post Office Building in the Borough of Manhattan, City, County and State of New York in the Southern District of New York, upon the petition hereto annexed of Boston & Maine Railroad, Bridgton & Saco River Railroad Company, Central New England Railway Company, Central Vermont Railway Company, Maine Central Railroad Company, Montpelier & Wells River Railroad, Rutland Railroad Company, Sandy River & Rangeley Lakes Railroad, St. Johnsbury & Lake Champlain Railroad Company and New York, New Haven & Hartford Railroad Company, for an order in the form hereto annexed granting leave to said corporations to intervene as parties defendant in the above entitled cause.

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Dated New York City, March —, 1922.

Yours &c.,

CHARLES F. CHOATE, JR.,
Solicitor for Boston & Maine Railroad et al.

c/o Winthrop & Stimson, Office & Post Office Address 32 Liberty Street, Borough of Manhattan, New York City.

To Walter C. Noyes, Esq., R. W. Barrett, Esq., John C. Bills, Esq., George F. Brownell, Esq., Clyde Brown, Esq., N. S. Brown, Esq., A. H. Elder, Esq., W. S. Jenney, Esq., H. T. Newcomb, Esq., Charles C. Paulding, Esq.

249 District Court of the United States for the Southern District of New York.

In Equity.

#23226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent.

Petition to Intervene as Parties Defendant.

To the honorable the Judges *for* the District Court of the United States for the Southern District of New York:

The Boston & Maine Railroad, a corporation of the State of Massachusetts; the Bridgton & Saco River Railroad Company, a corporation of the State of Maine; the Central New England Railway Company, a corporation of the State of Connecticut; the Central Vermont Railway Company, a corporation of the State of Vermont; the Maine Central Railroad Company, a corporation of the State of Maine; the Montpelier & Wells River Railroad, a corporation of the State of Massachusetts; the Rutland Railroad Company, a corporation of the State of Vermont; the Sandy River & Rangeley Lakes Railroad, a corporation of the State of Maine; the St. Johns-
250 bury & Lake Champlain Railroad Company, a corporation of the State of Massachusetts; and the New York, New Haven & Hartford Railroad Company, a corporation of the State of Connecticut respectfully represent that they are corporations under the laws of the states aforesaid and common carriers engaged in the business of operating railroads in interstate commerce; that they were complainants and parties in interest before the Interstate Commerce Commission in the proceeding in which was made the order dated January 30, 1922 which the petitioners in the above entitled cause seek to have enjoined, set aside, annulled and suspended.

Wherefore the said corporations above named now pray for leave to intervene as parties defendant in the above entitled cause.

BOSTON & MAINE RAILROAD,
BRIDGTON & SACO RIVER RAILROAD,
CENTRAL NEW ENGLAND RAILWAY,
CENTRAL VERMONT RAILWAY COMPANY,
MAINE CENTRAL RAILROAD COMPANY,
MONTPELIER & WELLS RIVER RAILROAD,

RUTLAND RAILROAD COMPANY,
SANDY RIVER & RANGELEY LAKES RAILROAD,
ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD COMPANY,
NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY,
By Their Attorneys, CHAS. F. CHOATE, JR.,
JAMES GARFIELD.

30 State St., Boston, Mass.

251 & 252 District Court of the United States for the Southern District of New York.

In Equity.

No. 23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

against

THE UNITED STATES OF AMERICA, Respondent.

This cause came on further to be heard on this 30th day of March 1922 and was argued by counsel, and thereupon, and upon consideration thereof it was

Ordered that Boston & Maine Railroad, Bridgton & Saco River Railroad Company, Central New England Railway Company, Central Vermont Railway Company, Maine Central Railroad Company, Montpelier & Wells River Railroad, Rutland Railroad Company, Sandy River & Rangeley Lakes Railroad, St. Johnsbury & Lake Champlain Railroad Company and New York, New Haven & Hartford Railroad Company, be and they hereby are admitted as parties defendant in the above entitled cause with liberty to take such proceedings as may be just and proper, and that they be entitled to be heard in all matters arising therein and entitled to notice of all proceedings and copies of all papers therein, and it is

Further ordered that the aforesaid corporations shall have until and including the 8 day of April, 1922 in which to file an answer to the petition of The Akron, Canton & Youngstown Railway Company, et al., herein, verified March 20th, 1922.

Dated March 30th, 1922.

JULIUS M. MAYER,
United States Circuit Judge,
Acting as District Judge.

253 [Endorsed:] District Court of the United States for the Southern District of New York. The Akron, Canton & Youngstown Railway Company et al., Petitioners, against The

United States of America, Respondent. In Equity. No. 23-226. Petition & Notice of Motion for Leave to Intervene and Proposed Notice thereon. Charles F. Choate, Jr., Solicitor for Boston & Maine Railroad et al. c/o Winthrop & Stimson, Office & Post Office Address, #32 Liberty Street, Borough of Manhattan, New York City, N. Y. Served March 24/22.

254 8. *Order Granting Petition of Intervention of Ann Arbor R. R. Co. et al.*

At a Term of the District Court of the United States for the Southern District of New York Held in the United States Court and Post Office Building, in the City of New York, on the 30th Day of March, 1922.

Present:

Hon. Charles M. Hough,
Circuit Judge.

Hon. Martin T. Manton,
Circuit Judge.

Hon. Julius M. Mayer,
Circuit Judge, acting as District Judge.

Equity. No. 23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al.,
Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

On reading and filing petition of the Ann Arbor Railroad Company, Atlantic City Railroad Company, Bauxite & Northern Railway Company, Bloomsburg & Sullivan Railway Company, Buffalo & Susquehanna Railroad Corporation, Buffalo, Rochester & Pittsburg Railway Company, Chesapeake & Ohio Railway Company of Indiana, Chicago & Illinois Midland Railroad Company, Chicago &
255 Eastern Illinois Railroad Company, Evansville & Indianapolis Railroad Company, Cooperstown & Charlotte Valley Railroad Company, Bluford Wilson and William Cotter, Receivers of the Chicago, Peoria & St. Louis Railroad Company, The Cleveland & Buffalo Transit Company, Detroit & Cleveland Navigation Company, East Jordan & Southern Railroad Company, Chicago, Kalamazoo & Saginaw Railway Company, Fonda, Johnstown & Gloversville Railroad Company, Fort Wayne, Cincinnati & Louisville Railroad Company, Gettysburg & Harrisburg Railway Company, The New York, Susquehanna & Western Railroad Company, New York & Long Branch Railroad Company, Theodore M. Cox, Receiver of the Galesburg & Western Railroad Company, Grand River Railway Com-

pany, Hocking Valley Railway Company, Illinois Terminal Railroad Company, Missouri & Illinois Bridge & Belt Railroad Company, Marquette & Bessemer Dock & Navigation Company, Minneopolis & St. Louis Railroad Company, Northern Ohio Railway Company, New Jersey, Indiana & Illinois Railroad Company, St. Louis & Hannibal Railroad Company, Tuckerton Railroad Company, Ulster & Delaware Railroad Company, Unadilla Valley Railway Company, Virginian Railway Company, Wabash, Chester & Western Railroad Company, Western Maryland Railway Company, Wharton & Northern Railroad Company and Edward Bailey, Receiver of the Williamsport & North Branch Railroad Company, verified on the 29th day of March, 1922, praying for leave to intervene as parties petitioner in the above entitled suit now pending before this Court, On Motion of Walter C. Noyes, one of the solicitors for the petitioners,

255½ Ordered that the petitioners have leave to appear and intervene as parties petitioner in the above entitled suit and to prosecute the same and be represented therein by counsel.

(Sgd.) CHARLES M. HOUGH,
Circuit Judge.

(Sgd.) MARTIN T. MANTON,
Circuit Judge.

(Sgd.) JULIUS M. MAYER,
Circuit Judge, Acting as District Judge.

256 9. *Answer of U. S.*

United States District Court, Southern District of New York.

No. E. 23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY and Forty-three (43) Other Steam Railroad Companies, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Answer of the United States.

257 United States District Court, Southern District of New York.

In Equity.

No. E. 23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY and Forty-three (43) Other Steam Railroad Companies, Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Answer of the United States.

First Defense.

United States for the First Defense to the petition filed herein against it says:

(*a*) The petition with the exhibits attached thereto and made a part thereof is without equity on its face and does not state any cause of action against the United States and the court may not grant the relief prayed or any part of the same.

(*b*) The matters and things alleged in the petition and exhibits attached thereto and sought to be put in issue were all before the Interstate Commerce Commission, were fully heard and determined by it, and were within its power and authority to hear and determine under the provisions of the act to regulate commerce and the transportation act, 1920. In its report in writing with
258 respect thereto, made after full hearing and on due notice to all of the parties, which states its conclusions, together with its decision, order or requirement in the premises, the matters and things of which complaint is made were fully considered and foreclosed by findings of fact based on substantial evidence adduced on the issues made by the parties.

Wherefore, the United States moves to dismiss the petition for want of equity.

Second Defense.

United States, for the Second Defense to the petition filed herein against it, says:

I. On information and belief, it admits the facts alleged in paragraph 1 in manner and form as alleged.

II. It denies the facts and conclusions alleged in paragraph 2, in manner and form as alleged, and each and every part thereof, with these exceptions: It admits (*a*) the amount involved exceeds the sum or value of $5,000, exclusive of interest and costs; (*b*) the suit arises

under the Constitution and laws of the United States in that the suit is brought to enjoin, suspend, annul, and set aside an order of the Interstate Commerce Commission and is instituted under the act of October 22, 1913. Respondent alleges that to the extent the petitioners invoke the general equity jurisdiction of the court the petition does not lie against the United States, as the United States is not suable without its consent under the general equity jurisdiction.

259 III. On information and belief, it admits the facts alleged in paragraph 3, in manner and form as alleged.

IV. On information and belief, it admits the facts alleged in paragraph 4, in manner and form as alleged.

V. It admits the facts alleged in paragraph 5, in manner and form as alleged, with this exception: It denies that percentage divisions and arbitrary allowances were provided for by contracts between and among the carriers respectively participating in the operation of through routes and the division of joint rates, and that said contracts have not at any time been abrogated, or attempted to be abrogated or revoked, by any of the parties thereto.

VI. It admits (*a*) that prior to the commencement of said proceeding, pursuant to the requirements of the transportation act of 1920, and more particularly sections 416 and 421 thereof, the commission made and entered a report and order in Ex parte No. 74, entitled "In the Matter of the Application of Carriers in Official, Southern, and Western Classification Territories for Authority to Increase Rates," which is officially reported in 58 Interstate Commerce Commission Reports, at page 220; (*b*) that such order was made upon the joint application of complainants and petitioners and other carriers designated as the Eastern Rate Group. For greater certainty with respect thereto, a copy of the report is attached hereto, made a part hereof, and filed herewith, and it is prayed that on the hear-
260 ing the same may be taken and considered as fully and completely as if set forth at length herein.

With respect to the remaining allegations of paragraph 6, and particularly those pertaining to the report in Ex parte No. 74, respondent alleges that in so far as those allegations, or any part thereof, may be inconsistent with the report in Ex parte No. 74, it denies such allegations and each and every part thereof.

Further answering paragraph 6, respondent alleges that petitioners herein were parties to Ex parte No. 74, and invoked the jurisdiction of the commission for the rate advances therein allowed. Subsequently, a number of the principal petitioners herein, viz, Lehigh Valley Railroad Company, Lehigh & Hudson River Railway Company, Erie Railroad Company, Delaware, Lackawanna & Western Railroad Company, and Delaware & Hudson Company, became parties to cause entitled "Lehigh Valley Railroad Company v. Public Service Commission, Second District, United States District Court, Northern District of New York, wherein and whereby those companies alleged and maintained, by the same counsel who appear here,

and on behalf of themselves and all other railroad common carriers within the Eastern Rate Group, that the enactment of the transportation act of 1920, and the amendment of the act to regulate commerce, was a valid exercise of the power of Congress to regulate commerce under the Constitution of the United States and that the order in Ex parte No. 74 was a valid exercise of the power of
261 the commission under the transportation act of 1920, and the amendment to the act to regulate commerce. The United States District Court sustained the power of Congress to pass the acts and of the commission to enter the order in Ex parte No. 74, and its opinion is reported in volume 272, Federal Reporter, at page 758. Subsequently, the Supreme Court of the United States affirmed the decree of the district court on the appeal of the State of New York, etc., v. United States, No. 283, October term, 1921, decided February 27, 1922. Respondent will refer to these opinions, and to each of them, upon the hearing hereof.

The power of the commission to prescribe divisions is correlated to its power to increase rates, as each power is derived from the same statute. In the instant case, having applied for the increases in Ex parte No. 74, and accepted the benefits thereof, petitioners are estopped from assailing, in manner and form here undertaken, the power of the commission under the same statute to fix the divisions under the plan pursued by the commission.

VII. It denies the facts alleged in paragraph 7, and each and every part of the same, in manner and form as alleged.

VIII. It admits the filing of the complaint and the amended complaint before the commission and the communication, dated September 9, 1920, of the chief examiner to the complainants before the commission. Subject to verification, it admits that Exhibits
262 A, B, and C, attached to the petition, are true copies of the documents they purport to be.

IX. It admits the facts alleged in paragraph 9, in manner and form as alleged, with this exception: It has no knowledge that the committees referred to "are still at work," and it neither admits nor denies the same, and if they become material upon the hearing it will require strict proof thereof.

X. It has no knowledge of the facts alleged in paragraph 10, in manner and form as alleged, and it neither admits nor denies the same; but in so far as the same are or may be inconsistent with the report on which the commission based its order, respondent denies such facts and each and every part thereof. If the same become material upon the hearing, it will require strict proof thereof, and to that end will insist that the report on which the commission based its order represents the true and correct facts.

XI. It denies the facts and conclusions alleged in paragraph 11, and each and every part of the same, in manner and form as alleged. It alleges that the expressions therein are mere quotations, excerpts, or fragments from the report of the commission which do not fully

justify the inference therefrom sought to be drawn. It specifically denies that the order "is supported neither by a finding that the existing divisions are or will become unjust, unreasonable, inequitable, preferential, or unduly prejudicial as between the parties thereto nor by a finding that the divisions required by said order are or will become just, reasonable, and equitable divisions."

263 XII. It denies the facts and conclusions alleged in paragraph 12, and each and every part of the same, in manner and form as alleged.

XIII. It denies the facts and conclusions alleged in paragraph 13, and each and every part of the same, in manner and form as alleged.

XIV. It denies the facts and conclusions alleged in paragraph 14, and each and every part of the same, in manner and form as alleged.

XV. It denies the facts and conclusions alleged in paragraph 15, and each and every part of the same, in manner and form as alleged.

XVI. It denies the facts and conclusions alleged in paragraph 16, and each and every part of the same, in manner and form as alleged.

XVII. It denies the facts and conclusions alleged in paragraph 17, and each and every part of the same in manner and form as alleged.

XVIII, XIX, XX, XXI, XXII, XXIII, XXIV, XXV. It denies the facts and conclusions alleged in paragraphs 18, 19, 20, 21, 22, 23, 24, and 25, and each and every part of the same, in manner and form as alleged.

Further answering the petition, and each and every part thereof, in so far as it has not heretofore been admitted, denied, or otherwise traversed, respondent denies—

(*a*) Any fact or facts alleged, which deny, or which seek to deny, any fact or facts found by the commission on which it rested its order.

264 (*b*) Any fact or facts alleged which are inconsistent with any fact or facts found by the commission on which it rested its order.

(*c*) Any and all inferences of fact from any particular fact or facts alleged which seek to deny, or which are inconsistent with, any facts or facts found by the commission on which it rested its order.

(*d*) Any fact or facts alleged which set up, or which seek to set up, matters and things which were not before the commission.

(*e*) Any fact or facts alleged which attack or which seek to attack the order of the commission, and to show facts other than what the commission found and on which it rested its order.

(*f*) Any allegations which allege that facts were found by the commission which in fact were not so found.

(*g*) Any conclusions of law alleged and insisted upon which are inconsistent with any conclusions of law held by the commission.

(*h*) Each and every allegation in the petition contained not herein specifically admitted or denied.

Wherefore, having fully answered, respondent prays that the petition be dismissed at the cost of the petitioners, and for such other and further order as may be appropriate.

BLACKBURN ESTERLINE,
Special Assistant to the Attorney General.
WILLIAM HAYWARD,
United States Attorney.

265 UNITED STATES OF AMERICA,
Southern District of New York,
City of New York, ss:

Blackburn Esterline, being duly sworn, deposes and says that he is special assistant to the Attorney General of the United States and is assigned to "Enforcement of acts to regulate commerce"; that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge except as to those matters therein stated on his information and belief, and as to those matters he believes them to be true.

BLACKBURN ESTERLINE.

Subscribed and sworn to before me this 15th day of April, 1922.

CARL BRECHER,
Notary Public.

Kings County Clerk's No. 496.
Register's No. 3178.
N. Y. Clerk's No. 317.
Reg's No. 3340.
Commission expires March 30, 1923.

266 10. *Answer of I. C. C.*

In the United States District Court for the Southern District of New York.

In Equity.

No. E.-23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of the Interstate Commerce Commission.

Walker D. Hines,
J. Carter Fort,
For Interstate Commerce Commission,
Intervening Respondent.

P. J. Farrell,
Of Counsel.

267 In the United States District Court for the Southern District of New York.

In Equity.

No. E.-23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

v.

THE UNITED STATES OF AMERICA, Respondent, and INTERSTATE COMMERCE COMMISSION, Intervening Respondent.

Answer of the Interstate Commerce Commission.

The Interstate Commerce Commission, which for convenience will be referred to hereinafter as the commission, intervening respondent in the above-entitled suit, now and at all times hereafter saving and reserving to itself all and all manner of benefit and advantage of exception to the many errors and insufficiencies in the petitioners' petition contained, for answer thereunto or unto so much or such parts thereof as this respondent is advised are material for it to make answer unto, answers and says:

I.

Answering Paragraph I of the petition, the commission admits that the allegations of fact contained therein are true.

268

II.

Answering Paragraph II of the petition, the commission admits that the allegations of fact contained therein are true, except that the commission denies that its order will deprive the petitioners of their property without due process of law, or will take their property for public use without just compensation, and denies that in making said order the commission acted without authority of law or beyond its powers and jurisdiction. In this connection the commission says that on March 28, 1922, it made an amended order effective April 1, 1922, a copy of which is annexed to the supplemental petition herein marked "Exhibit G." Except when otherwise indicated by the context, the word "order" as used in this answer means said amended order, and the word "report" as used in this answer means the report made part of its order.

III.

Answering Paragraph III of the petition, the commission admits that the allegations of fact contained therein are true.

IV.

Answering Paragraph IV of the petition, the commission admits that the allegations of fact contained therein are true. In this connection, however, the commission alleges that the subsidiaries
269 and operated lines referred to were severally and specifically named as complainants in the proceeding mentioned in said Paragraph IV.

V.

Answering Paragraph V of the petition, the commission admits the allegations of fact contained therein are true, except the allegations contained in the last sentence thereof which relate to the divisions of joint rates between points in the New England States and certain points elsewhere in the United States. As to the allegations contained in said sentence, the commission says that the primary division of joint rates between points in New England and points elsewhere in the United States is the division of such joint rates at points of connection at or near the Hudson River between the New England carriers which are almost wholly east of the Hudson River and the carriers, (hereinafter referred to as the Trunk Lines), with which they connect, and which are almost wholly west of the Hudson River, and that the only substantial exception to this statement is that in the case of traffic moving over the New York Central Rail-

road and its leased line, the Boston & Albany, the division between the New York Central interest on the one hand and any New England lines, other than the Boston & Albany, on the other
270 hand, is made at the junctions of the Boston & Albany with such other New England lines.

The commission says that said Trunk Lines are the Pennsylvania Railroad system, the New York Central Railroad system, the Erie Railroad system, the Delaware & Hudson Railroad, the Delaware, Lackawanna & Western Railroad, the Lehigh Valley Railroad and the Central Railroad of New Jersey (through which last mentioned line connection is made with the Baltimore & Ohio Railroad System as well as with various other railroads). The interchange of the Delaware, Lackawanna & Western Railroad and a portion of the interchange of the Central Railroad of New Jersey are effected at Maybrook, near the Hudson River, with the Central New England Railway via the Lehigh & Hudson River Railroad, a short line, which is controlled by the Central Railroad Company of New Jersey, the Delaware, Lackawanna & Western Railroad Company, the Erie Railroad Company, the Lehigh Valley Railroad Company, and the Pennsylvania Railroad Company, jointly, through stock ownership. The foregoing statement adequately describes the general situation respecting the traffic interchanged between New England and the rest of the United States, although there are three other small lines which effect some interchange with the New England lines at the Hudson River points, to wit: The Long Island Railroad (which is
271 controlled by the Pennsylvania Railroad Company), the New York, Ontario & Western Railroad (which is controlled by the New York, New Haven & Hartford Railroad Company), and the Lehigh & New England Railroad. The commission says that the interest of the New England lines (other than the Boston & Albany leased as aforesaid to the New York Central Railroad), is in the division of the joint rates at or near the Hudson River, or at said Boston & Albany junctions, with the trunk lines, and that said New England lines have no substantial interest in the great variety of subdivisions which may be made between said Trunk Lines and any of their connections further west; that said New England lines making such interchange with said Trunk Lines have respectively provided, over a long series of years, by contracts or by informal understandings, with said Trunk Lines respectively, for percentage divisions, or for percentages increased or diminished by arbitrary allowances, of said joint rates, so as to divide the same at or near the Hudson River or at said Boston & Albany junctions, as between such New England lines on the one hand and such Trunk Lines on the other hand, but the commission says that, in the case of such traffic which moves via one of said Trunk Line but which may have origin or destination beyond the same, on some of the latter's nu-
272 merous connecting carriers, the New England lines have not undertaken to make or control the contracts or understandings in accordance with which said Trunk Line should subdivide with such other carrier or carriers the division accruing west of the

Hudson River out of such joint rate, but that said subdivision has been a matter of contract or arrangement between such Trunk Line and its connections, although the New England lines have cooperated in settling the accounts of joint revenue on the basis of subdivisions so arrived at. The commission further says that the great bulk of such joint rates are with reference to traffic moving between points in New England and points in the territory west of the Hudson River, north of the Ohio River and east of the Mississippi River, known as Official Classification Territory, such traffic being about 88 per cent of the total traffic affected by its order herein. The commission further says that more than half of the traffic (other than coal which is not involved in the order which is the subject of this petition), moving between points in New England, on the lines of the complainants in the proceeding before this commission, and all points in the United States west of the Hudson River is interchanged with the New York Central Railroad and the Pennsylvania Railroad respectively, and that the rest of such traffic, (except the very small amount interchanged with the four small lines above
273 mentioned), is interchanged with the other Trunk Lines respectively above mentioned.

The commission denies that the New England lines parties respectively to contracts or understandings with said Trunk Lines respectively providing for divisions of such joint rates at or near the Hudson River or at Boston & Albany junctions have not attempted to abrogate or revoke said contracts or understandings, and in this connection alleges that the complainants in the proceeding referred to in said Paragraph V charged and complained in said proceeding that the divisions received by them of said joint rates were unjust, unreasonable, inequitable and unduly prejudicial and prayed that the commission fix and prescribe the just, reasonable and equitable divisions of said joint rates to be received by said complainants.

VI.

Answering Paragraph VI of the petition, the commission admits the allegation as to the designation by it, in the proceeding known as "Ex Parte 74," of the Eastern Rate Group and admits that in said proceeding it authorized uniform increases in freight rates and passenger fares within the territory embraced in such group. The commission admits the allegation that complainants claimed in said proceeding known as "Ex Parte 74" that the ratio of expenses of all railways located in New England to revenues was greater
274 than the corresponding ratio of all other railways in said Eastern Rate Group. The commission denies that complainants in said proceeding suggested to the commission that it, in allowing increased rates, should provide for the diversion to said New England railways of a considerable portion, estimated to be $25,000,000 or any other sum, of the increased earnings that would accrue to the other railways in the Eastern Rate Group. In this connection the commission says that complainants presented to it in said proceeding the contention that the commission ought to find in said

proceeding a method of giving due consideration to the amount of revenue required by complainants to pay their respective operating expenses, taxes and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation service of such carriers, as well as other factors bearing upon the necessities, from the standpoint of the public interest, of said complainants, and complainants stated that they made said representations without prejudice to their right to make further and other representations regarding the adjustment of divisions; and the commission further says that in its report in said proceeding it made the following statement:

> While the New England carriers are included in the eastern group and are subject to the percentage for that group, the
275 evidence as to the disproportionate needs of the New England lines makes it desirable that the carriers give careful consideration to the divisions of joint rates accruing to these lines.

The Commission refers to its report in "Ex Parte 74" for a more complete statement of the proceedings before the commission and of the action taken by the commission therein. The commission has not sufficient information or knowledge to form a conclusion regarding the truth of the allegations as to the representations made by complainants to petitioners and further says that such representations have no relevancy to this proceeding.

VII.

Answering Paragraph VII of the petition, the commission denies that in the proceeding referred to therein the complainants prayed the commission to award to them increases in their divisions in respect of freight traffic interchanged with petitioners' and other railways in amounts sufficient to aggregate substantially $25,000,000 per annum or prayed that any sum might be diverted to complainants. In this connection the commission says that the complaint in said proceeding alleged that the divisions received by the complainants from all joint rates and charges applicable to the transportation of property jointly by any of the complainants and any
276 of the defendants had come to be in violation of paragraph 4, section 1 and paragraph 6 of section 15 of the interstate commerce act and prayed that an order be made prescribing the just, reasonable and equitable divisions to be received by the parties from all such joint rates and charges. The commission refers, for the contents and purport of said complaint, to the copy thereof annexed to the petition herein and marked Exhibit A.

VIII.

Answering Paragraph VIII of the petition, the commission admits the filing with the commission of the complaint and amended complaint, copies of which are annexed to the petition and marked Exhibits A and C, respectively, and further admits the sending by its

chief examiner of his letter dated September 9, 1920, to Mr. E. G. Buckland, copy of which is annexed to the petition as Exhibit B. The commission refers to said copies as showing the contents, purport, and effect of said complaint, amended complaint, and letter.

IX.

Answering Paragraph IX of the petition, the commission admits that the allegations of fact contained therein are true and in this connection alleges that the efforts of the committees therein referred to failed to produce the prompt relief necessary and the com-
277 mission refers to the following statement in its report of January 30, 1922 (Exhibit E of the petition), which is made a part of the order attacked in this suit, regarding the work of said committees appointed pursuant to the suggestion contained in the commission's first report:

The course of action suggested in that report having failed to produce prompt relief, we must adopt another, justified by the record, which will accomplish what Congress intended should be accomplished.

The commission further alleges that the continuing work of said committees is a condition that was contemplated and directed by the commission's order and by the report made part thereof.

X.

Answering Paragraph X of the petition, the commission admits that the allegations of fact contained therein are true.

XI.

Answering Paragraph XI of the petition, the commission refers to the report and order in connection with the allegations purporting to state in small part the contents of said report and order, and the commission denies that the finding in said report——

We further find that the just, reasonable, and equitable
278 divisions to be received by the several other carriers participating in the aforesaid joint rates, will for the future be the amounts remaining of the joint rates over and above the divisions so to be received by complainants,

is formal only, or is contradicted by any other finding or findings in said report. The commission further denies that the order is not supported by a finding that the existing divisions are or will become unjust, unreasonable, inequitable, preferential, or unduly prejudicial as between the parties thereto, or by a finding that the divisions required by said order are, or will become just, reasonable and equitable divisions.

XII.

Answering Paragraph XII of the petition, the commission denies the allegations of fact contained therein and refers to the commission's order as showing the effect of such order.

XIII.

Answering Paragraph XIII of the petition, the commission admits that in its report and order it was stated that "it further develops that if the divisions now received by complainants on this merchandise traffic were increased by 15 per cent, subject to the limitation hereinafter set forth the result, as nearly as can be estimated, would be an increase in revenue of not exceeding $7,500,000."
279 The commission denies all other allegations of fact contained in said Paragraph XIII, and again refers to said order as showing the contents, requirements, and purport thereof.

XIV.

Answering Paragraph XIV of the petition, the commission denies the allegations contained therein.

XV.

Answering Paragraph XV of the petition, the commission denies the allegations contained therein.

XVI.

Answering Paragraph XVI of the petition, the commission denies the allegations contained therein.

XVII.

Answering Paragraph XVII of the petition, the commission denies the allegations of fact contained therein and in this connection says that its order prescribes the divisions of joint rates to accrue to the complaining New England lines specified therein, east of their connections with the said Trunk Lines at or near the Hudson River or at the Boston & Albany junctions, and that its order prescribes the divisions of said joint rates to accrue to the said Trunk Lines and their connections west of said points of connection, and that
280 such divisions are just, reasonable and equitable. The commission says further that its said order does not disturb the arrangements which the Trunk Lines and the other defendants have made among themselves for the subdivision of the divisions accruing west of the Hudson River or the Boston & Albany junctions or the arrangements which the said complaining New England lines have made among themselves for the subdivision of the divisions accruing east of the Hudson River or the Boston & Albany junctions.

XVIII.

Answering Paragraph XVIII of the petition, the commission denies the allegations contained therein and refers to its order as itself showing its character, effect and purport.

XIX.

Answering Paragraph XIX of the petition, the commission denies the allegations contained therein and refers to its order as itself showing its character, effect and purport.

XX.

Answering Paragraph XX of the petition, the commission denies the allegations contained therein.

XXI.

Answering Paragraph XXI of the petition, the commission denies the allegations contained therein.

281 XXII.

Answering Paragraph XXII of the petition, the commission denies that its order is indefinite, uncertain or ambiguous in either of the respects mentioned in said paragraph.

XXIII.

Answering Paragraph XXIII of the petition, the commission denies the allegations thereof.

XXIV.

Answering Paragraph XXIV of the petition, the commission denies that its order is arbitrary or without foundation in that it adopts a different basis for increasing the divisions of complainants in cases where they now receive 50 per cent or less of the joint rates than it adopts where complainants now receive more than 50 per cent of said joint rates.

XXV.

Answering Paragraph XXV of the petition, the commission denies the allegations contained therein, except those allegations contained in another paragraph or other paragraphs of the petition and repeated in said Paragraph XXV, and as to such allegations the commission here repeats and herein incorporates the answer or answers hereinbefore made thereto.

282 XXVI.

Answering the petition further, the commission alleges that in making its report and order, it considered and weighed carefully all of the evidence before it, and further alleges that it gave due consideration and weight, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge, and to all other factors, expressed or implied, in the interstate commerce act; and further alleges that said report and order were not made by it arbitrarily or unjustly, or contrary to the evidence, or without evidence to support them; it further alleges that in making said report and order it did not exceed the authority duly conferred upon it by law; and that its said order will not result in taking property of petitioners without due process of law, or in tak-
283 ing their property for public use without due compensation.

Except as herein expressly admitted, the commission denies the truth of each of and all the allegations contained in the petition. All of which matters and things the commission is ready to aver, maintain, and prove as this honorable court shall direct, and hereby prays that said petition be dismissed.

INTERSTATE COMMERCE COMMISSION,
By WALKER D. HINES,
J. CARTER FORT,
Its Solicitors.

P. J. FARRELL,
Of Counsel.

284 CITY OF WASHINGTON,
District of Columbia, ss:

Joseph B. Eastman, being duly sworn, deposes and says that he is a member of the Interstate Commerce Commission, the above-named intervening respondent, and makes this affidavit on behalf of said commission; that he has read the foregoing answer and knows the contents thereof, and that the same is true.

JOSEPH B. EASTMAN.

Subscribed and sworn to before the undersigned, a notary public within and for the District of Columbia, this — day of April, 1922.

[SEAL.]

ALFRED HOLMEAD,
Notary Public.

285 Copy.

11. *Answer of B. & M. R. R. et al.*

District Court of the United States for the Southern District of New York.

THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY et al., Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Answer.

of

The Boston & Maine Railroad,
The Bridgton & Saco River Railroad Company,
The Central New England Railway Company,
The Central Vermont Railway Company,
The Maine Central Railroad Company,
The Montpelier & Wells River Railroad,
The Rutland Railroad Company,
The Sandy River and Rangeley Lakes Railroad,
The St. Johnsbury & Lake Champlain Railroad Company,
The New York, New Haven & Hartford Railroad Company,
Defendants in Intervention by Permission of the Court.

Chas. F. Choate, Jr.,
James Garfield,
Of Counsel.

Original answer filed in office of the Clerk of D. C. of U. S. for So. D. of N. Y. on April 8, 1922.

286 District Court of the United States for the Southern District of New York.

THE AKRON, CANTON & YOUNGSTOWN RAILROAD COMPANY et al., Petitioners,

v.

UNITED STATES OF AMERICA, Respondent.

Answer

of

The Boston & Maine Railroad,
The Bridgton & Saco River Railroad Company,
The Central New England Railway Company,
The Central Vermont Railway Company,
The Maine Central Railroad Company,
The Montpelier & Wells River Railroad,
The Rutland Railroad Company,
The Sandy River and Rangeley Lakes Railroad,
The St. Johnsbury & Lake Champlain Railroad Company,
The New York, New Haven & Hartford Railroad Company,
Defendants in Intervention by Permission of the Court.

1. These defendants admit the allegations of Paragraph 1 of the petition.

2. These defendants admit the allegations of Paragraph 2 of the petition, except that they specifically deny that the Order of the Commission referred to in said petition will deprive the petitioners of their property without due process of law or will take their
287 property for public use without full compensation, and further specifically deny that in making said Order the Commission acted without authority of law and beyond its jurisdiction.

3. These defendants admit the allegations of Paragraph 3 of the petition.

4. These defendants admit the allegations of Paragraph 4 of the petition.

5. These defendants admit the allegations of Paragraph 5 of the petition, except that they deny that the joint rates therein referred to have been, prior to the bringing of the complaint referred to in said petition, divided in pursuance of formal contracts between all the carriers respectively participating in such through routes and joint rates. The origin of the division of such joint rates is of great antiquity, certain of said divisions having been established early in the 70's, the latest of said divisions established in or prior to the year 1906, and the great body of them established prior to the year

1895. The existing divisions between the New England Lines and the lines west of the Hudson River have been established at the Hudson River gateways, where occur the points of interchange on the great bulk of traffic between the Pennsylvania, the Central Railroad of New Jersey, the Baltimore & Ohio, the Erie, Lehigh Vallley, the Delaware, Lackawanna & Western, the New York Central and the Delaware & Hudson. The divisions between the New England Lines and the Trunk Lines other than at the Hudson River gateways were those established between the New York Central and the New Haven on the one hand and the New York Central and the Boston & Maine on the other hand via the so-called Boston & Albany junctions after the lease of the Boston & Albany to the New
288 York Central Railroad. So that in practice the divisions have been established between the New England Lines on the one hand and the Trunk Lines on the other hand, which interchanged traffic at the Hudson River gateways, and the proportion of the joint rates accruing to the New England Lines has been automatically distributed according to established percentages between the lines in New England connecting at said gateways with the Trunk Lines and their connections in New England on the east of the Hudson, and between the Trunk Lines there connecting with the New England Lines and their connections west and south. Each of said Trunk Lines has a great variety of connections, and with their connections they form a great variety of competitive routes to competitive points like Chicago, St. Louis, Cincinnati, Indianapolis, Pittsburgh and other important centres west and south of the Hudson River, and because of such competitive routes the divisions of the several New England Roads have remained substantially the same by whatever route the traffic moved west of the Hudson River to competitive points. The New England Lines have not been interested in how the revenue accruing west of the Hudson River was subdivided between the carriers west of the gateways, and the carriers west of the gateways have not been interested as to how the revenue accruing to the New England Lines should be subdivided east of the gateways. As a result of these conditions the New England carriers on the one hand and the Trunk Lines mentioned on the other constitute the parties which through a long series of years have established the bases according to which the rates have been divided at or near the Hudson River, and said Trunk Lines and their connections by means of arrangements among themselves have established a great variety of bases for subdivisions of
289 revenue accruing west of said gateways. In certain instances certain so-called arbitraries have been allowed for various reasons to lines on both sides of said gateways. And the defendants further say that for a considerable period of time prior to the filing of said complaint the New England Lines have endeavored by negotiation to obtain from their Trunk Line connections an increase and adjustment of said divisions and said arbitraries because of the new and unusual burdens of expense which have been imposed upon the New England Lines by new conditions, but have been totally unable to obtain from the Trunk Lines any readjustments whatever.

6. These defendants admit the allegations of Paragraph 6 of the petition to and including line 17 on page 8. They deny all the other allegations of said paragraph, and in further answer to said allegations say that in the proceeding known as Ex parte 74 these defendants required, prior to the award of the Labor Board, an increase of 47.5% in their freight revenues, based upon revenues for the year ending October 31, 1919, to enable them to show earnings of 6% upon their railway property held for and used in the service of transportation; that the increase of wages authorized by the Labor Board in 1920 added another 10%, making the percentage of increase required by the New England Lines 57.5%, while the increase of earnings required by the lines west of the Hudson River in the Eastern Rate Group, including the requirements of wage award, did not exceed about 38%; that the valuation of the railway property of the New England Lines held for and used in the service of transportation as determined by the Interstate Commerce Commission under the provisions of the Interstate Commerce Act and amendments was much larger with relation to their property
290 accounts than was the like valuation of the lines west of the Hudson River; that in the proceeding known as Ex parte 74, the Commission, having established the Eastern Rate Group, required the several carriers in said Group to submit proof of the fair value of their railway properties used in the business of transportation and their net earnings thereon, and computed the additional amount required to show a net return of 6% on the aggregate value of such property. It necessarily followed from this method of proceeding, which was the only one which could have been adopted by the Commission, that the high property values and low earnings and large increase of earnings on the volume of business for the year ending October 31, 1919, of the New England carriers necessary to show a return of 6% had the effect of raising the percentage of increase in rates required to show a return of 6% on the aggregate value of the carriers' properties in the Eastern Rate Group by the amount of at least 11½%. The complainants did not suggest to the Commission that in allowing increased rates they should provide for the diversion to the New England Roads of a considerable portion of the increased earnings which would accrue to the Eastern Rate Group by reason of such increase, but the Commission in Ex parte 74 said (58 I. C. C. 220, at page 247):

"While the New England carriers are included in the Eastern Group and are subject to the percentage for that Group, the evidence as to the disproportionate needs of the New England lines makes it desirable that the carriers give careful consideration to the divisions of joint rates accruing to these lines."

The Commission had also at an early date, in its decision entitled "Proposed Increases in New England," 49 I. C. C. 421, es-
291 tablished as a fact the need for higher local rates on the New England Lines than were required in other parts of the country, due to the unusual burdens because of the nature of the traffic

and the terminal characteristics of the New England Roads and the lower traffic density of their lines and greater expense of doing business. These inequalities and disadvantages, while recognized by the Commission in allowing higher local rates to the New England Lines and higher through rates to and from New England, have never been recognized by increased divisions of through rates. The complainants did not claim that the sum of $25,000,000 should be diverted to them. Said sum of $25,000,000 was fixed by an auditing committee appointed by the executives of the railroads in the Eastern Rate Group to ascertain to what extent the roads west of the Hudson River had benefited by the inclusion of the New England Lines in the Eastern Rate Group, and this sum of $25,000,000 was reported by said auditing committee as such sum. These defendants never proposed an assessment upon all the railways of the Eastern Rate Group to be in proportion to their gross freight revenues or in any other proportion, but they claimed that their share of joint through rates was inadequate, and by negotiation sought to persuade the lines west of the Hudson River to voluntarily adjust said divisions that they might be fair and equitable to the New England Roads, pointing out by way of illustration that the lines west of the Hudson River by reason of the inclusion of the New England Lines had received a higher percentage of increase on all their freight traffic, both local and interchanged, than they would have received had the New England Lines not been included in the Eastern Rate Group, and suggested it was a fair matter for consideration.

292 These defendants, in further answer to Paragraph 6, deny that their chief purpose in suggesting adjustments of revenue from joint rates was to divert $25,000,000 per annum or any other specific sum from the other carriers of the Eastern Group to themselves. The basis for their complaint before the Interstate Commerce Commission as well as the basis for all of their proposals to and negotiations with the Trunk Line and C. F. A. carriers was that the divisions which they received from joint rates on traffic interchanged with those roads had become unjust and unreasonable and totally inadequate to compensate them for the service which they performed in connection with said traffic. They alleged and proved before the Interstate Commerce Commission that the joint rates and divisions had been established for many years and that they were presumably fair until a comparatively recent time. They showed by evidence submitted before the Commission, coupled with circumstances known to the Commission as a matter of judicial knowledge through prior investigations, that local rates in New England were higher than local rates outside of New England as a result of the Commission's action in recognizing the relatively greater cost of operating in New England. They proved that while the divisions as originally established, in some instances granted them, by means of arbitraries and constructive mileage, a larger share of the joint rate than a strictly mileage prorate would have given them, and while this was agreed to and acquiesced in by all parties as a recognition of the then disproportionate costs of the service rendered by the New England carriers, there were many instances where they received

practically only a mileage prorate or even less and there had been no change made in the divisions to reflect further increases in the disproportionate cost although such change in local rates had
293 been allowed by the Commission as above alleged. They proved that within the last few years the disproportionate costs of operation in the New England section have been still further and very greatly increased, with the result that, although the divisions were formerly measureably fair and formerly reflected as a whole the New England Roads' handicaps, this situation has now ceased to obtain, and the New England Roads now receive a very much smaller return in proportion to the cost of the service rendered by them in connection with such joint rates than do their connections. These defendants, in their complaint before the Interstate Commerce Commission, also alleged and proved that their financial needs were very much greater proportionately than those of the Trunk Line and C. F. A. roads. They proved that their property valuation was conservative; that their gross income in spit of their relatively higher local rates was proportionately less than that of the other roads in the eastern territory because of their relatively low traffic density and their inadequate return from through freight traffic; and that their operating cost was relatively very much higher than that of their connections, with the result that their rate of income upon transportation property was very much less than that of the other carries in the eastern territory. These defendants further proved that their ratio of income received to cost of service performed was very much higher upon local and inter-New England traffic than upon traffic interchanged with their connections outside New England.

These facts formed the basis for the complaint of these defendants before the Interstate Commerce Commission. The reference to $25,000,000 a year was merely by way of illustration and was not in any sense the basis or the primary purpose of the complaint. The whole proceeding, as is shown by the record, was essentially
294 and solely a divisions case, and the evidence and fidings of the Commission amply supported the order which the Commission made.

7. These defendants deny all the allegations of Paragraph 7 of the petition and further answering say that the New England Roads were unable to obtain any consideration from the roads west of the Hudson for any adjustment of their divisions and thereupon, having exhausted every possibility of relief through direct negotiations, filed their complaint with the Interstate Commerce Commission, the allegations of which complaint as amended (except a schedule of representative joint rates and divisions attached thereto as Appendix B) are to be found on pages 47 et seq. of the petition, from which it clearly appears that such complaint charged that the divisions received by the complainants were unjust, unreasonable, inequitable and unduly prejudicial and preferential, and prayed the Commission to prescribe the just, reasonable and equitable divisions to be received by the parties, and made no reference to the sum of $25,-

000,000 above referred to except incidentally and as a factor material for the Commission to consider in determining the extent to which the divisions of the New England Lines should be increased.

8. These defendants admit that said complaint was filed August 28, 1920, by filing with the Commission a copy of the complaint marked Exhibit A attached to the petition, and that subsequently said complaint was amended as indicated in part by the copy marked Exhibit C attached to the petition. They deny all the other allegations of said paragraph, and further answering say that the number of said divisions of joint rates between the New England Lines and the lines west of the Hudson River was so great as to be properly characterized by the Commission as "myriad," and that it was impossible without unduly encumbering the record to file with the Commission copies of all said rates and divisions, but that with said amended complaint were filed a large number of typical rates and divisions by typical routes and a statement submitted of the principal kinds of tonnage moving thereunder; and that a further detailed specification of said rates and divisions would not have served any useful purpose and was not required or desired by the Commission.

295

9. These defendants admit the allegations of Paragraph 9 of the petition, except the allegation at the end thereof that the committees representing the respective parties are "still at work," and these defendants are informed and believe and therefore aver that without fault upon their part the work of studying and analyzing the structure of the rates and divisions and adjusting the same has proceeded so slowly and is so exceedingly complicated and because of their enormous number will require so great a length of time that notwithstanding the order of the Commission it was and is hopeless for the complainants to expect any relief through the method suggested by the Commission except possibly after the lapse of years. And further answering these defendants say that the quotation from the Commission's report and opinion in said Paragraph 9 omits a most important portion of the finding of the Commission which immediately preceded the language quoted and which portion is as follows:

"If it had been clearly and definitely shown that particular divisions assailed were but fair compensation for the service performed when they were established and that since the establishment complainants have been subjected to relatively exceptional operating expenses of permanent character, some basis for an adjustment by us of the divisions of joint rates as between the several carriers participating therein would have been indicated if those exceptional expenses were reflected in the rates."

296

And the defendants say that the foregoing paragraph was the gist of the first decision of the Commission; that the defendants in asking for reargument pointed out to the Commission that the record did clearly and definitely show that the particular divisions assailed were fair when they were established, and that since their establishment the complainants had been subjected to relatively exceptional

operating expenses of permanent character, and that such exceptional expenses were reflected in the rates established by the Commission's decision in Ex parte 74, and that upon reargument the Commission being satisfied by such showing determined that the divisions assailed had been shown to be but fair compensation for the service performed when established, that the complainants had been subjected to relatively exceptional operating expenses of permanent character since the establishment of said divisions, that such exceptional operating expenses of permanent character had been recognized by the Commission in its earlier decisions as sufficient to justify increases in local rates, and that these exceptional expenses were necessarily reflected in the increased rates established by Ex parte 74 by reason of the method adopted by the Commission for determining the increase necessary therein, and affirmatively found that the divisions of joint rates were unjust, unreasonable, inequitable, unduly preferential and prejudicial as between the carriers parties thereto.

297 10. These defendants deny that the work of said committees is progressing and say that without fault on their part it may be many years before the analyses suggested by the Commission in its earlier opinion can be arrived at. These defendants admit that on October 26, 1921, they filed a petition for reargument, pointing out in said petition that in the Commission's opinion of July 6, 1921, these defendants believed there was

(*a*) misinterpretation of the law;

(*b*) a misapprehension of the complainants' claims and prayers for relief; and

(*c*) failure on the Commission's part to apply well-settled rules of law to the evidence and draw proper inferences from the evidence.

These defendants admit that on January 30, 1922, the Commission made a second and further report and opinion, a true copy of which is Exhibit E attached to the petition. And the Commission followed said report with an order as referred to in said petition. And these defendants further answering say that a re-examination of the record in said cause and a re-examination in reference to earlier decisions by the Commission and the rules of law applicable to the evidence in said record were amply adequate to justify, and indeed to require, the report and opinion rendered January 30, 1922.

11. These defendants admit that Paragraph 11 contains language excerpted from said report and opinion of January 30, 1922, but allege that it is so set apart from its context as to create an erroneous impression, and for the correct statement of said opinion they respectfully refer the Court to Exhibit E attached to the petition.

298 And these defendants deny the allegations in said paragraph that the order is contradictory and is supported neither by a finding that the existing divisions are or will become unjust, unreasonable, inequitable, preferential or unduly prejudicial,

nor a finding that the divisions required by said order will become just, reasonable and equitable divisions, and they respectfully refer the Court to said Exhibit E for the full language of said finding.

12. These defendants deny all the allegations of Paragraph 12 of the petition, and further answering say that the petitioners and these defendants are essential parts of a national transportation system, that the increases of rates granted by the Commission in Ex parte 74 were justified by proper consideration of the public interest and that that public interest can only be served by a due regard to the method by which the increased joint rates shall be divided among the carriers participating therein in such manner as to carry out the purposes of said Transportation Act.

13. These defendants deny all the allegations of Paragraph 13 of the petition and say that the same are argumentative and incorrect.

14. These defendants deny all the allegations of Paragraph 14 of the petition, and further answering say that the record in the proceeding before said Commission was replete with evidence tending to show that the divisions between the respective parties to the proceeding were unjust, inequitable and unduly preferential and prejudicial to the complainants, and that in said proceeding about three thousand joint rates and divisions were shown by the complainants which were accepted by the principal traffic witness for the respondents therein as fair and illustrative, and that more than one thousand other divisions of joint rates were submitted to the Commission by various of the respondents in that proceed-
299 ing; that the Commission received evidence of all joint rates and the divisions thereof which any party to the proceeding desired to present and had full knowledge of joint rates and divisions which were fair and illustrative of the joint rates and divisions as a whole between the New England Lines and the lines west of the Hudson River.

15. These defendants deny all the allegations of Paragraph 15 of the petition.

16. These defendants deny all the allegations of Paragraph 16 of the petition, and further answering say that, if with reference to the particular lines named in said Paragraph 16, no divisions of joint rates were presented by the defendants, which defendants do not admit, nevertheless joint rates and divisions thereof which were fair and illustrative of the joint rates and divisions with said named roads were presented to the Commission and the roads named in said paragraph had full opportunity if such fair and illustrative divisions did not apply to the joint rates over their lines to present as fully as they desired evidence to show the contrary, and they failed to do so.

17. These defendants deny the allegations of Paragraph 17 of the petition and further answering say that said order prescribes the division of the joint rates in accordance with the established

practice and custom of the Commission, and that the following language was used in said decision:

"We further find that the joint rates and established divisions to be received by the several other carriers participating in the aforesaid joint rates will for the future be the amounts remaining of the joint rates over and above the divisions so to be received by complainants, to be divided among them as they may agree, or railing such agreement, as may be determined by us upon application therefor."

300 These defendants say that such has been the invariable practice of the Commission in the readjustment of divisions, as is well known to the petitioners.

18. These defendants deny all the allegations of Paragraph 18 of the petition, and further answering say that the record before said Commission was replete with evidence of the relative cost of the service in performing the joint carriage by the New England Lines and the lines of the Hudson River and statistics were furnished to the Commission, as will appear by an examination of said record, showing the higher cost of rendering such service in New England than west of the Hudson River, due to the terminal characteristics of the New England Lines, their lower density of traffic, the great multiplicity of branch lines and junctions and other factors which were fully set forth in the evidence.

19. These defendants deny all the allegations of Paragraph 19, and further answering say that said order deals only with class rates and commodity rates divided upon the same basis as class rates which the evidence in the record showed were unjust and inequitable to the New England Lines, and specifically omits to modify or alter the divisions on coal, coke and other specified classes of traffic upon which evidence was not supplied; and that the order was restricted to the division of class rates and commodity rates which divide on class rates basis which were shown by the evidence before the Commission to be unjust, inequitable and unreasonable.

20. These defendants deny all the allegations of Paragraph 20 of the petition, and further answering these defendants say that said order gives consideration to all the factors which Paragraph 6 of Section 15 of the Transportation Act of 1920 required the Commission to consider, namely:

301 "In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expense, taxes and a fair return on their railway property and the importance to the public of the transportation services of such carriers, and also whether any particular participating carrier is an originating, intermediate or delivering line, and any other fact or circumstance which would ordinarily without regard to the mileage haul entitle one carrier to

a greater or less proportion than another carrier of the joint rate, fare or charge."

21. These defendants deny all the allegations of Paragraph 21 of the petition, and further answering these defendants say that the record before the Commission was replete with evidence as to the financial condition both of the New England Roads and of the petitioners and of their respective operating expenses, taxes and revenue, and all the other factors required to enable the Commission to render a fair and proper decision under the provisions of said Paragraph 6, Section 15 of the Transportation Act.

22. These defendants deny the allegations of Paragraph 22 of the petition, and further answering say that there was no occasion for the Commission to determine how the increased divisions should be divided among the complainants, because said complainants had agreed upon the method, and said order automatically distributes the increases of divisions among the complainants in the the proportions they previously enjoyed, and that said order does fix the method in which the loss or diminution in revenue shall be
302 divided among the petitioners.

23. These defendants deny all the allegations of Paragraph 23 of the petition.

24. These defendants deny all the allegations of Paragraph 24 of the petition.

25. So far as the allegations of Paragraph 25 are not a reiteration of the allegations of earlier paragraphs in said petition these defendants deny all of said allegations. As to those allegations which are a restatement and reiteration of those set forth in earlier paragraphs these defendants refer to their specific answers to the paragraphs as numbered.

THE BOSTON & MAINE RAILROAD,
THE BRIDGTON & SACO RIVER RAILROAD COMPANY,
THE CENTRAL NEW ENGLAND RAILWAY COMPANY,
THE CENTRAL VERMONT RAILWAY COMPANY,
THE MAINE CENTRAL RAILROAD COMPANY,
THE MONTPELIER & WELLS RIVER RAILROAD,
THE RUTLAND RAILROAD COMPANY,
THE SANDY RIVER AND RANGELEY LAKES RAILROAD,
THE ST. JOHNSBURY & LAKE CHAMPLAIN RAILROAD COMPANY,
THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY,

By Their Solicitors,
CHAS. F. CHOATE, JR.
JAMES GARFIELD.

303 COMMONWEALTH OF MASSACHUSETTS,
Suffolk, ss:

James H. Hustis being duly sworn deposes that he is president of the Boston and Maine Railroad, one of the defendants who join in this answer; that he makes this affidavit in behalf of these defendants; that he has read the foregoing answer and knows the contents thereof; and that it is true.

JAMES H. HUSTIS.

Subscribed and sworn to before me this seventh day of April, 1922.
RICHARD C. CURTIS,
Notary Public.

304 & 305 12. *Minutes.*

United States District Court, Southern District of New York.

In Equity.

23-226.

THE AKRON, CANTON & YOUNGSTOWN RAILWAY COMPANY et al., Petitioners,

vs.

THE UNITED STATES OF AMERICA, Respondent.

Before Honorable Charles M. Hough, Martin T. Manton, and Julius M. Mayer, Circuit Judges, April 22, 1922.

Sidney C. Ormsby Company, United States District Court Reporters in Equity Causes, 18 Vesey Street, N. Y.

306 12. *Stenographic Minutes of Hearing Before Honorable Charles M. Hough, Honorable Martin T. Manton, and Honorable Julius M. Mayer, C. JJ., April 22, 1922.*

Judge Hough: Gentlemen, after consultation with my colleagues we will sit this morning three hours, until half past one, then adjourn for a half hour. This hearing will have to close at four o'clock sharp. That will make all told five hours, and the time I understand will be divided two-fifths to the complainants and three-fifths to the defendants, to be divided as the defendants see fit. You may proceed.

Mr. Noyes: May it please the Court, if your Honors please, through a mistake the Illinois Central Railroad Company was named as one of the petitioners, and I ask leave to file an amendment striking out from the title in the first paragraph the name Illinois Central Railroad Company, a corporation of the State of Illinois.

Judge Hough: Is there any objection?

Mr. Noyes: The Illinois Central goes out.

Mr. Esterline: That goes out.

Judge Hough: Granted.

Mr. Noyes: I have handed up to your Honors corrected petitions. There were some typographical errors in the copies which had been handed up heretofore.

Now, if your Honors please, in one of the exhibits, to wit: the amended complaint, a part of the petition, has included in it a schedule which it was impossible to reproduce and make a part of
307 the petition, and it was stated in the petition that it would be offered in evidence; and so I beg leave, if your Honors please, to offer in evidence this schedule, which is a part of the exhibit attached to the petition (tendering schedule).

Judge Hough: There being no objection, the motion is granted. Have the exhibit marked as Exhibit A of this date.

Schedule marked Petitioners' Exhibit A.

Mr. Noyes: I offer in evidence, if the Court please, certified copies of the testimony and exhibits before the Interstate Commerce Commission in the proceeding in which the order in question was made. Those are piled up on the table. They are certified as being the entire evidence in the case, with the exception of five physical exhibits which it has been impossible to reproduce, large maps, and a representative of the Interstate Commerce Commission is in Court with those exhibits, and I would like to offer the entire testimony in this case.

Judge Hough: Let it appear on the stenographer's minutes of this hearing that all the testimony and all the exhibits in the proceeding in which the order complained of was made, are considered as in evidence; that the physical exhibits are produced here and now by the representative of the Commission, and are to remain in the custody of the Commission.

308 Mr. Noyes: They may remain in the custody of the messenger, and may be taken back to the Commission, if your Honors please?

Judge Hough: They may.

Mr. Noyes: I also offer in evidence, if the Court please, a certified copy of the communication referred to in the petition as having been addressed by the Examiner of the Commission to the vice-president of the New York, New Haven & Hartford Railroad Company.

Judge Hough: Have it marked Exhibit B of this date.

(Marked Exhibit B of this date.)

Mr. Noyes: I beg leave to file an original and three duplicates of the affidavit of Henry Adams, the affidavit of Dick T. Lawrence, the affidavit of Harry S. Bradley, and the affidavit of William G. Storey. All of these affidavits, with the exception of the affidavit of William G. Storey, have been served upon counsel. This Storey affidavit was not prepared until last night, it is very short, and copies will be handed to counsel. I also offer the affidavit of Charles L. Ewing, which I ask leave to file.

Mr. Esterline: If your Honors please, I wish to lodge objections to

the affidavits, and I can do that after Judge Noyes has
309 & 310 offered his record or I can do it now, whichever may be desirable. I have the objections in written form and can hand them up to your Honors, although I have not included in them two of the affidavits, which I have not yet received. I have only the Bradley, Ewing and Lawrence affidavits, but I take it it will be understood that these objections embrace the other two as if their names were written herein. I therefor hand the objections to the Court (tendering paper).

Mr. Noyes: I cannot argue the objections: the Government does not give me a copy of them.

(Copy of objections handed to Mr. Noyes by Mr. Esterline.)

Judge Hough: The Court rules that they will take the affidavits, subject to the objection, and will consider the objection and the affidavits after the argument. No reason appears why argument should not proceed, notwithstanding the objections.

1 Before the Interstate Commerce Commission.

Docket No. 11756.

BANGOR & AROOSTOOK RAILROAD COMPANY et al.

vs.

ABERDEEN & ROCKFISH RAILROAD COMPANY et al.

Room 1103 I. C. C. Building,
Washington, D. C.,
Wednesday, December 15, 1920.

The above-entitled case came on for hearing at 10 o'clock A. M. before Chairman Clark and Attorney-Examiner Charles F. Gerry.

Proceedings.

Chairman Clark: Please come to order, gentlemen.

There is set for hearing this morning No. 11,756, Bangor & Aroostook Railroad Company and others vs. Aberdeen & Rockfish Railroad and others.

The general nature of this case is a complaint or petition from the railroads in New England for the exercise by the Commis-
2 sion of its powers under paragraph 6 of Section 15 of the Interstate Commerce Act. The complaint is rather general in its terms. The territory covered by the rates in question is very broad, and the number of defendants is very large, ranging apparently over the whole alphabet, from the Aberdeen & Rockfish Railroad Company to the Zanesville & Western.

Paragraph 6 of Section 15 of the Act says that if the Commission, after full hearing, is of opinion that the divisions of joint rates, fares,

or charges are unjust, unreasonable, inequitable or unduly preferential or prejudicial as between the carriers, parties thereto, it shall by order prescribe the just, reasonable and equitable divisions to be received by the several carriers. It provides that in exercising ths power the Commission "shall give due consideration, among other things, to the efficiency with which the carriers concerned are operated, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circum-
3 stance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier of the joint rate, fare or charge."

It will be seen first that the Commission can exercise this power only after full hearing, and, second, that it is obliged to take into consideration, among other things, all of those considerations to which I have just called attention. It is therefore obvious that this is a proceeding that is necessarily accompanied by the development of all of the information that interested carriers, either complainants or defendants, desire to submit in support of their respective contentions.

From the petition or complaint coming from the New England lines, it would seem that the burden is on them, and that they should proceed in the submission of their testimony.

Mr. Choate, of counsel for the complainants, introduced a paper marked "Choate Exhibit No. 1," being a letter written by Mr. Campbell, of the New York, New Haven & Hartford Railroad, to the Chairman of the Commission, dated April 10, 1920, and called attention to the supplementary petition filed in May 1920 in Ex Parte 74, by the seven New England Railroads complainants before the Commission in No. 11,756, and containing the two following paragraphs:

"The amount necessary to give the 6 per cent return on the aggregate property investment of the carriers parties to this statement is given due consideration and included in the exhibits filed with the main statement, to which this is a supplement, but that a substantial portion of that sum, to wit, approximately $25,000,000, will not accrue to the New England carriers parties to this statement, but will accrue to other carriers in Official Classification territory, and also to carriers in Canada."

"The petitioners here do respectfully propose that this Commission give consideration to the manner in which adequate revenue shall be obtained for the carriers parties to this statement, and what relief may be necessary to enable them to provide adequate transportation facilities to the territory by them served."

DWIGHT S. BRIGHAM, a witness called by the complainants, testified:

That he is a resident of Newton, Massachusetts, and has
4 been employed by the Boston & Maine Railroad for about a year and a half, and was formerly with the Boston & Albany Railroad about ten years. He was a member of an accounting committee which prepared the exhibits in Ex Parte 74, and was familiar with the exhibits presented by the New England roads in connection with that case. He has subsequently prepared exhibits for submission in this case.

He testified to Brigham Exhibit No. 1, which he stated shows approximately $838,000,000 as the aggregate property investment of the seven New England roads which are petitioners in this case and shows in detail how this figure is made up, and that said sum includes $40,000,000 representing the New York, New Haven & Hartford's interest in the New York terminal properties owned by the New York Central, this interest being a perpetual right. The exhibit indicates that a 6 per cent. return on this investment would amount to approximately $50,000,000; that the average annual net income of these roads during the test period was $35,000,000 or between 4 and 5 per cent. on their book cost; but during the 28 months of Federal control, the average annual net railway operating income was slightly less than 4½ million dollars, or less than one-half of one per cent. on their investtment.

The next column of the exhibit represents an estimate which was made for the year ended June 30, 1920, with revenues and
5 expenses adjusted to represent as nearly as may be the present level of rates, wages, and cost of supplies, indicating an annual aggregate net income of $8,696,666.

This net income of $8,600,000 does not represent the rate at which these roads are now earning. The indications from the first two months under the new rates are that this income, which was based on a realization of substantially the entire effect of the rate increase, is not being realized by a considerable amount. Even if that were realized, the average return on the property of these roads as shown on their books would be about one per cent., leaving the roads represented short of a 6 per cent. return on their book value by about 41½ million dollars.

The property investment shown in the first column includes all lines leased or operated by the petitioners; and corresponds with the figures used in building up the aggregate property investment for the Eastern group in Ex Parte 74. The figures in the first column include the property investment of the New Haven in the New York Connecting Railway; but not in the non-carrier properties; being simply the property used in the railroad transportation business.

The witness introduced Exhibit No. 2, which he testified
6 was prepared by him along the lines of the statement of Mr. Hulme, a witness for the carriers in Ex Parte 74, and that in preparing it he had obtained from the Valuation Department the latest information which they had upon the valuation of these New

England lines. It developed from Mr. Hulme's testimony that at that time of the 18 roads in the Eastern group used, the New England roads apparently were largely responsible for the excess of cost of reproduction over book value, although it should be said that the larger systems west of the Hudson River were not included in those figures, although there were three or four lines of considerable size.

This exhibit is not absolutely complete, and does not cover absolutely all of the properties included in the property investment figures in Exhibit No. 1; but it is shown in comparison with property investment and figures for the same dates and representing the identical properties shown in the valuation figures but is submitted for the purpose of comparison in substantiating the conservative book figures for these New England roads. It indicates that the property investment of those portions of these lines which have been included on the dates of the valuations amounted to approximately $575,000,000, as compared with a cost of reproduction new plus present land value of over $921,000,000.

The witness is not familiar with all the details of valuation; and part of the difference is between the total of $674,000,000 in the fourth column and $838,000,000 which is the total investment account due to some minor portions of these systems which were not included in the general valuation; but a large part of the difference is represented by the additions to the property between the dates of the valuation and October 31, 1919, and also by the item
7 of materials and supplies on hand October 31, 1919, which was included in the figures used in Ex Parte 74.

This represents entirely the properties used for railroad purposes, with the exception that the Bureau of Valuation have reported about $17,000,000 of the New Haven's property as non-carrier land, which amount has not yet been agreed to.

The witness testified to Brigham Exhibit No. 3, which he said is submitted to illustrate the present serious condition of the New England railroads, by showing the relation of their net railway operating income to their fixed charges. The detail of individual roads is shown on this statement. In aggregate it shows that the fixed charges amount to $34,783,000, against which there is available non-operating income of about $7,000,000, which leaves fixed charges to be met out of operating income of $27,600,000. As compared with this the estimate for the adjusted year ended June 30, 1920, indicates a net railway operating income of $8,696,000, leaving a deficit below fixed charges of nearly $19,000,000.

This figure is based on an adjusted year, and it is necessarily an estimate. The individual railroads have all attempted to make these adjustments to take into account the increases in rates, in wages, and in cost of materials. It was prepared as the best estimate
8 of what might be expected for the coming year, but, as will be shown in another exhibit, the first two months under the new rates have not justified the optimism of this estimate. Nothing is included under "fixed charges" for dividends, these charges being absolutely interest charges which have got to be met or result in receiverships.

In the case of the Boston & Maine, by a reorganization effective December 1, 1919, approximately 2-½ million dollars of leased line rentals were converted into dividends on preferred stock—on first preferred stock—which are only paid when earned, and that therefore the fixed charges as shown here are 2½ million less than they would have appeared prior to the reorganization, and this 2½ million is not included in the first column of the exhibit.

The last dividend on the Boston & Maine common stock was paid in 1913; in 1909 it was reduced from 7 to 6 per cent; in 1911 to 5½ per cent; in 1912, to 4 per cent; in 1913, to 3 per cent, which is the last year on which a dividend was paid.

The Boston & Maine common stock outstanding is about 39½ million dollars, par value. Up to 1909 the standard dividend was 7 per cent, which had been paid at least back to 1900.

The New Haven dividend of 8 per cent was reduced in 1913, in the June 30th quarter, to 1½ per cent, or at the rate of 6
9 per cent, and that dividend was paid for two quarters only, and there has been no dividend paid since September 30, 1913. The amount of New Haven stock outstanding is $157,000,000.

The Maine Central has been a dividend-paying road at least for 30 to 35 years; and within the last month it has been obliged to defer action on both its preferred and common dividends for the first time in its history.

At the last meeting of the directors, at which normally the dividend due at the end of the year on that stock would be declared, it was found advisable to postpone action on such dividend in view of the present situation.

If, after 1920, the Boston & Maine fails to pay dividends equal to 4 per cent on one-half its bonded debt, its bonds will cease to be legal investment for savings banks in Massachusetts.

Brigham Exhibit No. 4 shows both the net railway operating income and the net income after the payment of charges for the months of September, 1920, October, 1920, and the two months combined. The net income after the payment of charges for September was a deficit of $1,270,000; for October, a deficit of $2,300,000, and for the two months together, a deficit of $3,591,000. October showed $120,000 short of money to pay operating expenses, taxes and joint facility and equipment rentals.

10 The month of October should ordinarily be one of the most favorable months for the New England roads. If we multiply the total for the two months by 6, we would reach a deficit for a year considerably greater than the $19,000,000 which was estimated on the June 30th year. We attempted to make up a full year based on September and October, but in view of the fact that some roads had deficits and some surpluses, it was very difficult to construct the year. But the indications were that taking into account the fact that these months should ordinarily show a substantial amount of earning toward the fixed charges, the fact that they did show a substantial deficit would indicate that if the con-

ditions of these two months should continue, these roads would fail to earn their fixed charges by very much more than $19,000,000. In September, to some extent, they have not felt the full effect of the rate increase, and yet October shows a much greater deficit than September.

On the Boston & Maine (which the witness believes to be true of the other roads) the ton mileage held up substantially in October, although there was a reduction in high class traffic and a corresponding increase in coal which had accumulated during the summer, which tended to keep up that figure. The real falling off in
11 business did not develop to any serious extent until the month of November. The coal accumulated during the summer west of the Hudson River. There had been all during the spring and summer embargoes on the New England roads, and that had affected coal to some extent, as well as other commodities. With the falling off in general business it gave an opportunity for coal to move very freely.

The witness has made a study of the increase in the payroll of the New England roads since the test period; and the total figures for payroll for the New England roads in the test period was, in round numbers, $63,800,000. In 1916, the last full year before the war, it was $69,200,000; the year 1919 it was $129,350,000; and the best estimate that can be made for 1920, assuming that the present rates of wages had been in effect throughout the entire year, is $174,000,000, or about $105,000,000 more than 1916, and $110,000,000 more than the average for the test period.

Part of this was due to increased business, and the witness believes that $70,000,000, and probably more, was due to the increased rates of wages.

One great item on the New England roads is the cost of fuel. The estimated increase between before the war and 1920, on that item alone is nearly $25,000,000,000.

Brigham Exhibit No. 5 shows one element of that increase,
12 and illustrates why, even though the price of coal at the mine may be reduced, the New England roads cannot profit by the full amount of that reduction. A rail freight haul is always involved in the movement of all coal to New England, whether it comes all rail, or moves by rail to tidewater and thence by water to New England; and in the year 1919 the freight charges paid to other lines for the movement of coal (and these lines to which this was paid are practically all the lines west of the Hudson River), was $8,591,915. Adding to this the freight charges paid on other materials, the amount would be 9½ million dollars. In the 40 per cent increase in freight rates this charge was increased by $3,824,000, which would be an added expense to the New England roads, and which, of course, all went to their western connections.

At the present scale of freight rates it is estimated that the New England roads would pay to other lines nearly thirteen and a half millions of dollars in freight charges, based on the 1919 use of materials, which in some respects was below normal. That $13,386,000 is the cost for coal and materials which the New England lines

have to pay to their western connections, while their western connections that have mines situated on their lines do not have that item to anywhere near the same extent.

13 The only figures the witness has as to the per diem are based on what appears as the actual debt or credit balances. These figures indicate that in the test period these seven New England roads had a per diem debit balance of about 3½ million dollars. Based on the business of 1920, at the dollar rate, this debit would amount to nearly 8½ million dollars. The per diem debit figures, however, do not represent the entire burden of car hire to roads situated as these New England roads are, for the reason that it would be possible by the acquisition of additional cars to wipe out the per diem debit balance entirely, but the burden would be there just the same, only represented in fixed charges on equipment.

Brigham Exhibit No. 6, consisting of four sheets, is a copy of the report of a joint accounting committee which was made at the direction of a committee of executives of the trunk lines and New England roads which was considering this case last summer. This report was intended to illustrate the contention of the New England roads that by their inclusion in the Eastern group the other roads in that group profited to the extent of approximately $25,000,000 more than they would have if New England had been made a separate group; and that, conversely, by enjoying the average rate increase for the group, the New England roads realized approximately

14 $25,000,000 less than if it had been practicable to make them into a separate group which would have earned 6 per cent. on its aggregate property investment.

The first sheet is a summary in which the results for the October 31st year are divided between three groups: New England Trunk Line and Central Freight Association. The following three sheets show the details for those three groups.

The division between Central Freight Association and Trunk Line territory was to a considerable extent arbitrary, and was made simply at the suggestion of the Presidents' committee. By "arbitrary" it is meant that it was necessary to include in one group or the other certain lines which were in both groups and could not be divided.

The first sheet indicates that based on this report the New England roads would have needed approximately 47.4 per cent. increase in freight rates. This was before the labor award, and based on the original request for a 30 per cent. increase in rates in the Eastern group.

The first figure, New England property investment, $867,000,000, differs from the other figure used, and was repeated here simply because it was intended to make this an exact copy of the report. That figure includes approximately $77,000,000 property investment of the Boston & Albany Railroad, which was included in this report,

15 but which is not a party to this case, as a plaintiff. It does not include the amount of approximately $40,000,000 which represents the New Haven's interest in the New York terminal properties.

At the time this report was made, and as a matter of fact since, it

was found impracticable to apportion the labor award satisfactorily between individual carriers, and it was therefore agreed that this report should be based upon the original questionnaire and the request for a 30 per cent. increase in freight rates based on that questionnaire.

The first column indicates that the New England roads would have required an increase in rates of 47.4 per cent. to yield 6 per cent. on their property investment.

Similar information is shown for Trunk Line territory and C. F. A. territory.

In the fourth column it is indicated that all three territories combined would have required 29.461 per cent. increase, while in the next to the last column it is indicated that the Trunk Line and C. F. A. territories combined would have required a 27.981 per cent. increase, or, in other words, by the inclusion of the New England roads in the group a request for the group as a whole was justified which was 1.48 per cent. more than the C. F. A. and Trunk Line territories alone could have justified on this record.

16 Sheets 2, 3 and 4 show this information in detail as between individual roads. Sheet 2 is the New England roads; sheet 3, the Trunk lines.

Column 8 shows, by individual roads, the amount by which those roads profited on the assumption that the inclusion of the New England roads would have given them 1.48 per cent. more additional increase in freight revenue than they would have otherwise received. The total of column 8 is $16,000,000 plus for the Trunk lines, and $8,000,000 plus for the C. F. A. lines.

Column 10 indicates, for individual roads, the amount by which it was at that time estimated they would earn an income in excess or below 6 per cent. on their property investment figures as submitted in the case. There was a joint committee appointed of Trunk Line and New England representatives, of which Mr. C. E. Hildum of the Lehigh Valley was chairman, which submitted this report to the joint traffic committee and through them to the executives; and that committee was made up of representatives both of the New England lines and of the trunk lines and C. F. A. lines, the New York Central, the Pennsylvania, the New Haven, and the Boston & Maine, and all agreed that the result stated in this exhibit was correct.

17 Sheet 2, headed "New England lines" in Column 9, shows the amount by which these New England lines in the aggregate would have failed to earn 6 per cent. on their property investment. That statement includes eight roads, but the effect of including the Boston & Albany is not material on the total of that column, No. 9; even if they got the 30 per cent increase, and expenses and other items have remained the way they were in the year on which the questionnaire was based, that is, the year ended October 31, 1919, they would fail by that amount to earn 6 per cent.

The total of $27,000,000 at the bottom of column 10 on sheet 4 is the total by which it was estimated that the so-called Central

Freight Association roads would enjoy earnings in excess of 6 per cent. on their aggregate investment on the same basis.

On the basis of this statement the Trunk Line and Central Freight Association roads combined would exceed 6 per cent. by the same amount by which the New England roads would fail to earn 6 per cent., namely, $24,464,860. The total of column 10, on sheets 3 and 4, would be the same, regardless of whether it might be claimed that some of these roads should be otherwise distributed between C. F. A. and Trunk Line territory.

The figures in column 8, sheets 3 and 4, purport to show the amount by which each road gained because of the inclusion
18 of the New England lines in these aggregates. That is worked out by taking 1.48 per cent. of the freight and switching revenue on each of these roads, on the assumption that the percentage of increase for each of these roads was that much more than it might have been if New England were not included. That column has no reference to what these roads would earn on their investment. It simply indicates that, regardless of whether they apparently would be above or below 6 per cent., under this general increase they would profit to that extent by the inclusion of the New England lines in the group, showing, in substance, the distribution of the $24,000,000 plus, which accrued by adding the 1.48 per cent.

Exhibit No. 7 attempts to bring this same information more up to date to include the effect of the labor award and the subsequent additional increases in rates beyond the 30 per cent which were considered necessary to meet the effect of this labor award.

Statement No. 7 compares 10 New England roads with the other roads in the Eastern group; those 10 roads including the Boston & Albany, the Grand Trunk in New England, and that portion of the Canadian Pacific line which runs across Maine. The reason for making this statement up on that basis was that the Bureau of
19 Railway Economics in making any statement have always treated all these roads as "New England," and as this statement was made up for the witness and under his direction at the Bureau, he had them include the same roads that they normally classed as "New England," and will show later how the elimination of those three roads, not petitioners in this case, would affect the result, which is very slight.

In this exhibit there was taken, first, the amount of additional revenue which it was originally estimated would be needed to yield 6 per cent, on which the original request was based. To this was added an item to represent the effect of the labor award. That was prorated by the Bureau on the basis of the ratio of pay roll compensation of the New England group and the balance of the roads to the total pay roll for 1919, and is not accurate as between roads; but that was the only information available for the roads in general.

The additional revenue required for these New England roads to yield 6 per cent was $68,800,000. The effect of the labor award was estimated at $31,900,000.

So that from the final increase in rates under Ex Parte 74 it was

necessary, in order to yield 6 per cent to have additional revenue of $100,848,000.

Against this it was estimated that, if the full effect of all
20 of the increases allowed by the Commission were realized, these roads would receive additional revenue of $75,182,704, leaving them short of a 6 per cent return by $25,666,236.

It indicated also that, if all other increases beside freight were continued as allowed, and it was attempted to raise this additional amount from freight revenue alone, it would have required a further increase in freight revenues of 18.26 per cent, or a total of 58.26 per cent, instead of 40 per cent.

It indicates, on the same basis, that the remaining roads exceed 6 per cent by $26,727,748, and that, if they had been considered independently of the New England roads and the freight revenue alone adjusted to meet exactly their needs, they apparently would have needed 1.59 per cent less, or an increase of 38.41 per cent.

In this statement the overage and the shortage as between districts do not exactly agree. They were only able to balance within a million dollars. In other words, the other roads appear to earn 2 1/2 million more than 6 per cent, and these 10 New England roads 2 1/2 million less than 6 per cent. The difference is in fractions in these rate increases. The witness assumed in this computation on each side that both the New England roads and the other roads realized the full 40 per cent.

21 The principal accounting officers of the New England roads have estimated that, if the character of business remained the same, they would not have realized more than 37 per cent from the freight increase. As a matter of fact, the character of the business is apparently changed considerably, and practically all of the roads in October, even with an almost equal business, showed less than 30 per cent increase in freight revenue. That has not as yet been thoroughly analyzed, but it is being done.

By change in the character of the business the witness means that the reduction in business which was first felt by the New England roads was on higher class commodities; so that, while the total ton mileage showed no substantial reduction in October, the total revenues fell far short of realizing the full 40 per cent increase over the previous year. The full 40 per cent and 20 per cent increases allowed were applied, but because of the change in the character of the business they did not realize the full effect.

In Exhibit 8 the witness attempted to show the same information as shown on Exhibit No. 7, but restricted it to the 7 New England roads which are plaintiffs, and transferred the other three roads to the Eastern group. The items are practically the same. It
22 indicates that these 7 New England roads failed by $23,942,932 to earn 6 per cent. That is to say, they would have failed to earn 6 per cent if all of the increases had been realized and conditions had remained the same; and the balance of the roads in the group appeared to earn in excess of 6 per cent by $25,000,000. The percentages are only very slightly changed. It appears from this statement that the roads outside of New England in the Eastern

Group enjoyed as increase of 1.17 per cent more than they would have if New England had not been included.

In this statement, as in the preceding one, the effect of the wage award has been prorated arbitrarily, as previously explained. The witness has not that information in detail for all the roads in the East. But, so far as the New England roads individually are concerned, based on the retroactive time pay rolls which have been paid in recent months, it appears that the wage award has resulted in an increased expense of approximately $33,000,000 per year, instead of the $28,000,000 per year used in this exhibit.

It is possible that other roads outside of New England would also show that the effect of the wage award was under-estimated; but, in view of the character of the traffic in New England and the larger number of employes per unit of traffic, it seems reasonable to
23 assume that the wage award affected that territory more seriously than other parts of the country.

The sum of these last three Exhibits, Nos. 6, 7 and 8, indicates that because of the inclusion of the New England roads in the Eastern Group, the New England roads failed by about $25,000,000 to realize the 6 per cent which they hoped for, and the roads outside New England in the Eastern Group gained that same amount, or substantially that amount.

Brigham Exhibit No. 9 represents a year ended October 31, 1919, and is based on actual figures for six alternate months, converted into a year on the basis of the ratio which the freight revenue for these months bore to the total freight revenue for the twelve months. It shows in the first column that 20,000,000 tons of merchandise were interchanged between the New England roads and their trunk line and Canadian connections, and 14,000,000 tons of coal, or a total tonnage for the year ended October 31, 1919, of 34,099,720 tons. The total freight charges accruing from this business were $191,505,655, of which the next column shows that $67,272,648 accrued to the New England lines, and $124,233,007 to the other lines participating in this business to the west and north.

Of the 34,000,000 tons, 8,400,000 is directly interchanged with the New York Central, including the Boston & Albany; 6,600,000 tons with the Pennsylvania; 3,900,000 tons with the Central Railroad of New Jersey, and 6,179,000 tons with the Delaware & Hudson, and other roads having over 1,000,000 tons are the Canadian
24 Pacific, the Erie, the Grand Trunk, and the Lehigh Valley. This 34,000,000 tons is all either originating or terminating tonnage for the New England roads. The totals in money are actual for the year selected and do not reflect the increases granted under Ex Parte 74.

The year ended October 31, 1919, was taken because it was the year which was used as a basis of the case in Ex Parte 74. The year ended October 31, 1919, was all within the period of Federal control.

There were no very great changes within New England during Federal control. There were not the extreme diversions of traffic there that occurred in other parts of the country.

Exhibit No. 10 is supplementary to Exhibit No. 9, and shows the total tonnage and revenue as divided between the several New England roads.

The total tonnage shown is 46,000,000 plus tons. The reason for that difference, as compared with the 34,000,000 tons, is that a portion of the 34,000,000 tons was handled by more than one New England line, and in showing the participation of each New England road in this through business there necessarily is some duplication. The revenues in the last column, however, of course, correspond with those used in statement No. 9.

25 This statement shows for the individual New England roads, not only the revenue from Trunk Line traffic and the tonnage interchanged with trunk line and Canadian roads, but also shows for each road the traffic which is purely local to that road, and also the traffic which is handled on more than one road, but which still is entirely local to New England. That is designated here as interline New England traffic.

It indicates, for example, in the first column, that the Boston & Maine handles 14,000,000 tons of traffic interchanged with roads to the West and North, 5,800,000 tons of local freight, and 3,900,000 tons of interline New England traffic; and similar information is indicated for the other lines.

In the last column it appears that the revenue accruing from trunk line traffic was $67,000,000; from local traffic, 33½ million dollars; from interline New England traffic, $21,000,000.

Eliminating duplications, the total tonnage handled by these New England roads was 53,854,253 tons, of which 34,099,720 was the so-called Trunk Line traffic; 5,187,878 tons the interline New England traffic, and 14,566,655 tons traffic which was purely local to each road.

On the Boston & Maine, the 14,200,000 tons of Trunk
26 Line tonnage produced $23,860,000 of revenue; 5,800,000 tons of purely local traffic produced $12,960,000 of revenue; and 3,900,000 tons of interline New England traffic produced $7,000,000 of revenue. On the New Haven, 18,300,000 tons of Trunk Line traffic produced $28,000,000 of revenue, whereas 5½ million tons of local traffic produced $15,709,000 of revenue. There is no duplication of earnings in this exhibit.

Exhibit No. 11 is a summary of all traffic, both that interchanged with Trunk Lines and Canadian roads, interline New England, and local. Column 9 shows unduplicated tonnage and revenue for New England as a whole as follows:

34,000,000 tons of trunk line traffic, on which the New England roads received $67,000,000 of revenue; 5,000,000 tons of interline New England traffic, on which these roads in the aggregate received $21,000,000 of revenue, and 14,500,000 tons of purely local traffic, on which these roads received $33,500,000 revenue, or a total of 53,800,000 tons, on which the New England roads received $122,000,000 revenue.

Brigham Exhibit No. 12 shows where this tonnage which was in-

terchanged with the Trunk Line and Canadian roads originates or terminates in New England; in other words, to what extent the individual New England roads are terminal carriers on this business; and further indicates how it is divided as a whole and by each New England road as between the direct connections to the West and North. The most important connections are the New York Central, with 8,900,000 tons, the Pennsylvania with 6,600,000 tons, the Delaware & Hudson with 5,700,000 tons, the Central of New Jersey with 3,900,000 tons, and the Canadian Pacific, Erie, Grand Trunk, and Lehigh Valley, with between one and two million tons.

The Boston & Maine has its principal interchange with
27 the Delaware & Hudson at Mechanicville, New York, and with the New York Central at Rotterdam Junction, N. Y. The New Haven's heaviest interchange is at Harlem River, with the Central Railroad of New Jersey, the Pennsylvania, Erie, Lehigh Valley, and with the New York Central by way of the various junction points on the Boston & Albany.

Exhibit 12-A shows that the New Haven Road has its principal point of interchange at Harlem River, New York City; going north, the Central of New England at Maybrook and Campbell Hall; the Boston & Maine at Rotterdam Junction and Mechanicville; the Rutland at Norwood; the Central of Vermont at St. John's; the Boston & Maine, again, at Newport and Sherbrooke; the Maine Central at Vanceboro, and the Bangor & Aroostook at St. Leonard.

The New Haven's interchange with the New York Central practically all occurs at junctions with the Boston & Albany, at State Line, Pittsfield, Westfield, Springfield, Worcester and Framingham.

The Grank Trunk extends across Maine, one line, with practically no branches, from Portland to Lennoxville, Province of Quebec.

Brigham Exhibit No. 13 is a separation of the information shown on Exhibit 10 and other exhibits by junction points, instead of by immediate connections. It indicates that of the 34,000,000
28 tons, 7,600,000 tons were interchanged at Harlem River, 5,300,000 tons at Mechanicville, 3,800,000 tons at Rotterdam Junction, and 3,400,000 with the New York Central by way of the Boston & Albany Junction. This is the same tonnage, simply separated by junctions instead of by roads.

Brigham Exhibit No. 14 further indicates the distribution of the total revenue accruing on this business which is under consideration. This statement is not based on the six months, but is based on October, 1919, only, and has been equated to a year, in order to show as nearly as may be how this revenue and tonnage were divided between the different districts.

This statement indicates that of the total of 34,000,000 tons, 61 per cent of it originates or terminates in Trunk Line territory, 27 per cent in Central Freight Association territory, and the balance divided between Western, Canadian, Southern and Transcontinental.

It further indicates that the New England carriers' proportion of this revenue, as previously stated, was $67,272,648, which amounts to 35.1 per cent of the total; that the trunk line carriers' proportion of the total revenue was $68,485,946, or 35.7 per cent of the total;

that the Central Freight Association carriers' proportion was
29 $18,319,857, or 9.6 per cent of the total, and that the proportion accruing to all other carriers, namely, the Western, Canadian, Southern and Transcontinental, amounted to $37,427,204, or 19.6 per cent of the total. These figures are all based on October, prior to the rate increase, and show the relative proportions.

10 per cent of the interchange between New England roads and carriers outside of New England is interchange with Canadian carriers as immediate connections. But 3 per cent originates or is destined for Canada. A considerable quantity of business which is interchanged with the Canadian carriers as direct connections finds its way into other territory in the United States, largely, the witness believes, into Central Freight Association territory.

On interchange business which originates in or terminates in Trunk Line territory, the New England carriers receive 46.6 per cent of the total revenue, and the Trunk Line carriers 53.2 per cent. On that which goes to or from Central Freight Association territory, the New England roads receive 34.5 per cent of the revenue, the Trunk Lines 33 per cent; the Central Freight Association lines 27 per cent, and other lines, 5.5 per cent. The "other lines" are largely the Canadian roads.

On the transcontinental business the New England roads
30 receive 7½ per cent of the total revenue; the trunk lines 7 per cent; the Central Freight Association roads, 12½ per cent, and the other roads (which in this case include the Western and Transcontinental roads), 73 per cent of the total.

Brigham Exhibit No. 15 is a brief summary, in per cents, of information that has appeared on these previous exhibits, which shows what proportion of the business of each New England road is this so-called interchange business. It shows that for the New England roads as a whole 64 per cent of their total tonnage for this particular year was tonnage which was interchanged with the roads west and north of New England, and that from this 64 per cent of tonnage they received 55 per cent of their total freight revenue.

In one case, on the Central New England, it will be noted that 96 per cent of the tonnage was through traffic; Central Vermont, 71 per cent; New Haven, 67 per cent; Boston & Maine, 59 per cent; Rutland, 78 per cent; Maine Central, 37 per cent; Bangor & Aroostook, 27 per cent; this exhibit relating to freight revenue alone, and not total revenue.

The second part of this statement simply illustrates by percentages what has already been shown on previous statements; the per-
31 centage of this tonnage which is interchanged with each of the several immediate connections of the New England roads and the division of the revenues accruing to the lines west of New England, between these several intermediate connections. It does not mean that the Central of New Jersey, for example, received 12 per cent of the revenue on this business. It simply means as against the business that was directly interchanged with the Central Railroad of New Jersey, and a portion of which went beyond that road to

other lines, that the total revenue accruing to all lines west of the Hudson River was 12 per cent of the total.

Recess.

WILLIAM J. CUNNINGHAM, called as a witness by the complainants, testified as follows:

That he resides at Cambridge, Massachusetts, and is Professor of Transportation in Harvard University; has had about 25 years' railroad experience with the Canadian Pacific Railway, the Boston & Albany; Delaware, Lackawanna & Western; New York, New Haven & Hartford, and the Boston & Maine, and has had experience with them both in trunk line and in New England territory.

This experience has been mostly in analytical work. He was statistician or assistant to the Vice-President of the Boston &
32 Albany; he was president's assistant on the New Haven and on the Boston & Maine, and statistical clerk to the general superintendent on the Lackawanna Railroad. During the period of Federal control of railroads he was manager of the operating statistics section for approximately one year, and then for approximately six months Assistant Director of Operation.

The witness' appointment at Harvard as a full professor dates from 1916, but between 1908 and 1916 he did some work at Harvard in lecturing and as assistant professor. His courses at Harvard deal with railroad organization, railroad operation, railroad accounting, and analysis of railroad problems; also collaborating in a course on traffic management. He has made a study of the condition and position of the New England railroads.

In response to a request from the executives of the New England railroads last March or April, witness undertook to make a study of the New England roads, with a view to this rate case. His study was applied particularly to the operating expense features, analyzing operating handicaps, and trying to evaluate those handicaps in terms of statistical indices or operating costs. This study involved a study
and a comparison of the costs of operation in New England
33 and in territory in the Eastern rate group west of the Hudson.

Throughout these studies and in the exhibits which the witness has prepared an effort has been made to use comparative statistics showing the figures for New England, and also on the same basis for the trunk lines, using the New England roads as a group and the trunk lines and the C. F. A. lines as a separate group, and the study was directed to the purpose of ascertaining whether, on the basis of cost, the divisions which the New England roads were receiving were fair in the light of the relative costs of service.

The witness' purpose was to show by such comparative evidence as is available that because of certain physical traffic and operating factors the New England railroads have been called upon to make a larger investment than the other Eastern roads in proportion to their freight traffic, and that these characteristics also prevent them, under the current costs of operation, from attaining an operating ratio as low as that which is possible under the more favorable conditions on

the other lines in the Eastern territory. It is his purpose further to show that the higher costs in New England are the result of their peculiar traffic and operating handicaps, and are not due to any lower degree of operating efficiency.

Cunningham Exhibit No. 16 shows how the differences in
34 the traffic and operating characteristics between the New England roads and the roads in Trunk and C. F. A. territories adversely affect the ability of the New England roads to maintain their solvency. These differences have been accentuated in a marked degree during the period of Federal control and since the signing of the Armistice.

The exhibit shows the net operating income (as defined by the Federal Control Act) of the New England roads and of the Eastern territory exclusive of New England during the so-called test period, and during the two years and two months of Federal control. The test period has been taken on this exhibit, as it was taken under the Federal Control Act, as a pre-war basis, and from it may be measured the net influence of the rate advances and the higher wage and material costs and other operating factors since 1917. The local managements of the New England roads were practically the same during Federal control as they were during the test period, and all roads were operated as a unit by the Director General. The roads in the Trunk Line and C. F. A. territories and New England were operated under one regional director.

The railroads of New England did not suffer by a diversion of traffic or any other influences which would affect their rev-
35 enue in a greater degree than the revenues of trunk lines and the lines in C. F. A. territory, and the units of operating efficiency in New England as they were promulgated from month to month by the Operating Statistics Section of the United States Railroad Administration, show that the degree of improvement in New England was as great and in most cases greater than the degree of improvement in Trunk Line and C. F. A. territory.

Yet, notwithstanding these factors which ought to bring about a favorable result, namely, the increase in the gross revenue and the relatively greater improvement in operating efficiency, the operating costs were so much higher in New England than in the Eastern territory outside of New England that the average net operating income in New England during the control period was a strikingly smaller percentage of the average net operating income of the test period.

In brief, Exhibit 16 shows that during the 26 months ended February 29, 1920, the New England roads earned but 12.8 per cent of the 26 months' proportion of the standard return, while the remainder of the roads in the Eastern district earned 48.9 per cent. Stated in other terms, to show the relation, during the test period the net operating income of the New England roads was 11 per cent of the net operating income of the other roads in Eastern territory. But during the control period it was 2.9 per cent.

36 The ratio for maintenance of way in New England is very little different from that in the Trunk Line. It was 14.7 per cent. in New England and 13.1 per cent. in the other parts of

the Eastern territory. That means that 14.7 cents out of every dollar of operating revenue was taken for maintenance of way in New England, and 13.1 cents in the trunk and C. F. A. lines.

In the maintenance of equipment, the ratio in New England is less than that of the trunk lines; 21.2 per cent. in New England, and 25.7 per cent. in trunk and C. F. A. territory.

It is in the transportation ratio that the great difference appears. The transportation under the Interstate Commerce Commission classification embraces the direct operating costs, operating stations, trains, yards, casualties and miscellaneous expenses incurred in the production of transportation. It cost 51.2 cents out of every dollar in New England as compared with 44.6 cents in trunk line; so that the total operating ratio in New England was 91.9 as contrasted with 87.6 in the rest of the Eastern territory.

The next column shows net Federal income as defined by the Federal Control Act. It is net operating revenue minus taxes and minus uncollectible railway revenue, with certain deductions
37 for equipment rents and other rents. It is the amount of money upon which the Government rental was based.

Deductions for equipment rents are defined by the Federal Control Act. In the beginning of Federal control there were either additions or deductions from income in equipment rents, for example. That is for freight car hire. Later on freight car hire was abolished as between roads in Federal control, but there were debits and credits to income on account of locomotive rentals and similar joint facilities. The term deductions for equipment rents means an adjustment, some being deductions, and some additions.

The next column shows the net Federal income earned during the Federal control period, and that may be related to the next column, which shows the standard return or the comparable figure on the same basis for the three years prior to Federal control. The object of the exhibit is to show the small proportion which New England was able to earn of that standard return, and the larger proportion which the trunk and C. F. A. lines were able to earn under a common management and under fairly similar conditions. The important final figures to be compared are the 12.8 for New England and 48.9 for Trunk lines. Comparatively speaking the trunk lines were able to do nearly 4 per cent. better, measured by the per cent of standard return. A question may be raised
38 as to why the Grand Trunk in New England is included in these exhibits. These exhibits were prepared earlier in the summer, and at that time the witness was asked to treat the New England roads as a group, and made up the exhibits including the Grand Trunk and the Boston & Albany. Subsequently, when the Boston & Albany became a defendant, the Boston & Albany figures were eliminated, but those for the Grand Trunk were not eliminated, for no particular purpose, but merely because they were in there, and the Grand Trunk in New England was a New England line. It did not occur to the witness at the time that they should be eliminated, because the Grand Trunk proper is a defendant. In nearly every case the inclusion of the Grand Trunk does not help

the New England case any, but it does in the first exhibit, because its percentage of standard return was smaller than the other roads. There was no particular reason for including it.

The major handicaps to operation in New England in comparison with operation in Trunk Line and C. F. A. territories may be summarized under four headings. Each of these groups embraces factors which are largely beyond the control of the railroad managements:

First, there is a diversity of routes and a diffusion of traffic.
Second, the low freight traffic density.
39 Third, the short haul.
Fourth, terminal characteristics.

These factors are all inter-related and overlap each other, so that it is difficult to discuss any one of them without encroaching to some extent on the others.

It is difficult, too, if not impossible, to make any exact separation of revenues, expenses and other statistical data between that which applies to the interline traffic and that which applies to the local traffic. It is necessary, therefore, in the comparisons which follow to take the freight traffic as a whole in both territories, and in doing that the witness frankly recognizes that the high proportion of local freight traffic in New England may have an adverse effect upon operating costs. But it should be noted that the whole question of the local freight rate structure in New England was thoroughly investigated by the Commission and the so-called Anderson Scale was made effective about a year ago. This scale resulted in substantial increases in the local freight rates of New England, and placed them upon a basis which was somewhat higher than the class scale of Central Freight Association territory. These rates have now been increased 40 per cent., in common with all freight rates. It is the witness' opinion that while the comparison might be somewhat different if it were practicable to segregate the
40 revenues and expenses of the interline traffic from that of the local traffic, yet the inclusion of the local traffic on both sides of the equation preserves the fairness of the comparison and affords indices of relative earning power which should be fairly indicative.

Terminal density is one of the important factors which work against low operating costs in New England. It is trite to say that New England is one large railroad yard. This has been recognized by the Commission in the texts of certain decisions, and in its report in Ex Parte 74, just decided, the Commission asserts that New England has peculiarities which call for special consideration. While it is perhaps true that in certain small areas in Trunk Line and C. F. A. territory the network of junctions, belt lines, yards, and terminals is as dense as that in similar areas in New England, the witness believes that in no other territory of equal size are these characteristics so marked as in the dense manufacturing sections of Connecticut, Rhode Island, Massachusetts, and southern New Hampshire, considered as one district.

New England is primarily a terminal. It is the destination of

the raw products moving from the Central, Western and Southern States, and the originating point of the finished products
41 which move to those States. Furthermore, these points of destination and origin are not concentrated in a few small sections, but they are spread out over the entire railroad, particularly in the cases of the New Haven and Boston & Maine.

An examination of the map which Mr. Brigham presented this morning as an exhibit shows the absence of well defined main lines. The ratio of secondary and branch lines is unusually high, and it is difficult to make a satisfactory classification of main lines.

In the case of the New Haven the three principal arteries between New York and Boston are bisected at frequent intervals by cross lines, many of them of traffic importance.

In the case of the Boston & Maine the map shows that the lines radiate from Boston like the spokes of a wheel, and those lines are interlaced at various points by secondary lines.

These characteristics necessarily mean an unusually high density of stations, yards, junction points and locomotive terminals. They mean also a relatively short haul for freight, and, because of the scattered manufacturing cities and towns, they mean a relatively large amount of dropping and picking up of cars, a relatively large number of switching classifications in yards, a relatively heavy detention to freight cars, and a relatively low ton-mile productivity of equipment and labor. All of these mean relatively
42 high operating costs and relatively high investment per unit of traffic.

In looking over some United States Railroad Administration papers last evening the witness found the Director General's address at Swampscott on June 21, 1919. In that address Mr. Hines gave this as his opinion, and it bears out what the witness has said about New England:

"In New England conditions are exceptional, because here railroad operation is to a large extent a terminal proposition, and it has become increasingly apparent for years past that the terminal costs in railroad operations are perhaps the most serious branch of railroad costs. The actual cost of transporting property over the road is relatively much less than the cost of handling the same traffic in terminals. The traffic reaching New England points is largely traffic on which New England gets but a short haul, and that short haul includes a terminal cost, and this terminal cost is very heavy, because New England is so densely populated that it is difficult and expensive to increase the railroad facilities so as to enable them to be handled on an economical basis."

Take the single item of freight station density. If we
43 compare the freight stations on the two principal New England roads with four of the principal trunk lines, the difference is evident. A comparison of all New England roads with all trunk lines is not practicable, because there are no comprehensive or inclusive data on that subject, but they made a special study to

compare the Boston & Maine and the New Haven with the Pennsylvania, Erie, Baltimore & Ohio, and New York Central.

On the two New England roads there is one freight station for every 3.87 miles of road; on the four trunk lines there is one freight station for every 4.30 miles of road. The difference—that is, between 3.87 and 4.30—is not striking in itself, but when account is taken also of the freight traffic density, its significance is apparent. In 1919 the freight traffic density of the two New England roads was 1,527,689 revenue ton miles per mile of road, compared with a density of 4,300,479 on the four trunk lines. Expressed in percentages the comparison indicates that the station density on the two New England roads is 11 per cent more than that of the trunk lines—it is 111 per cent of that of the trunk lines—while the traffic density of the two New England roads is but 35 per cent of that of the four trunk lines. Expressing it in another way, the ton miles per station per year on the two New England roads is only 32 per cent of
44 that of the trunk lines.

These statistics are given merely as an indication, and without the thought that they are conclusive in themselves, because the number of stations may not be a convincing unit, as stations vary in size and importance. Yet the witness thinks that they give a good illustration of that factor of terminal density.

Referring to the matter of junction points as an evidence of this diffusion of traffic, it can be illustrated by taking the two principal New England roads. The New Haven road has 1,938 miles of line. On its 1,938 miles there are 225 junctions or intersections. There is one for every 8.6 miles. On the Boston & Maine the ratio is one junction point or intersection point for every 13 miles of road, and in the case of the Boston & Maine 42 of these are located within a radius of 30 miles of Boston, or within that radius there is one junction or intersection point for every 8 miles of road.

Cunningham Exhibit No. 17 is intended to show principally the short average haul. The figures are taken for 1918, as that was the last complete statistical report of the Interstate Commerce Commission.

Summarized by groups they show that in that year the average haul per ton per railroad in New England was 100.64 miles,
45 whereas in trunk line the average haul was 153.39 miles. In other words, the average haul in New England is less than two-thirds of the average haul in Trunk Line and C. F. A. territory. That means that for a given volume of ton miles, each ton is handled one and one-half times as often in New England as each ton is handled in Trunk Line territory.

The importance of this factor may be appreciated when we consider what a substantial part of operating expenses is made up of station and yard costs.

Exhibit 17 shows that in New England the traffic density as expressed in revenue ton miles per mile of road was 1,226,084, which may be compared with 3,638,058, the ton-mile density of the rest of the eastern territory. The inclusion of the Grand Trunk line there tends to raise the average density in New England. If the Grand

Trunk were omitted it would bring the average density to approximately 1,217,000 instead of 1,226,000. It would decrease the average haul just a trifle, from 100.64 to 100.6.

In New England the highest density is that of the Central New England. Combined with the New Haven it would give a density somewhat the same as that of the Boston & Maine Railroad, namely, 1½ or 1 6/10 millions. That is the maximum in New England.

46 Comparing these two maxima with the Trunk Line, we find that many of them have a ton-mile density in excess of five millions and two are in excess of ten millions, ranging from 12,900,000 on the Pittsburgh & Lake Erie, 10,000,000 on the Bessemer & Lake Erie; the New York Central has a density of four million and a quarter; the Chicago & Erie, 6,750,000; the Erie, 4,482,000; the Lackawanna, 5,836,000, and so on.

It may be said that the average haul in New England would necessarily be short because the lines are shorter. It is true that the average length of the railroad as shown by the witness' next exhibit, No. 18, is slightly shorter than that of the Trunk Line, namely, the average road in New England has a length of 925 miles as against 961 in Trunk Line. If the Grand Trunk were taken out of that, however, it would make the average in New England 1,032 instead of 924. Witness introduces that merely to show that the length of the road in itself is not a factor in determining the average haul per ton per road. Taking the figures as shown in witness' exhibit, the trunk lines and C. F. A. lines have 4 per cent greater length of road. The point of the exhibit is that the trunk and C. F. A. lines are 4 per cent longer, but they have an average haul which is 52.4 per cent greater than in New England.

47 On the New Haven road, under current conditions, out of 287 freight engine runs, 150, or 52 per cent, are locals, and but 137, or 48 per cent, are through trains. All of the local service, and 57 out of the 137 through trains are utilized in this specialized service. In other words, about 72 per cent of the regular freight engine runs on the New Haven road are necessary and depend but little on the total volume of business.

An exhibit for the Boston & Maine Railroad, No. 19, gives the facts in detail for one day. This day was picked at random during the period when they were making this study, a day of normal freight traffic—May 26, 1920. Of the 502 trains run on that day, 8 per cent were fast freight, 43.4 per cent were slow freight, and 48.6 per cent were locals and mixed. Of the train miles, the fast freights made up 13.8 per cent, the slow freights, 61 per cent, the locals and mixed trains 25 per cent. The average run per fast freight train was 94 miles; for the slow freight service, 76 miles; and in the local and mixed service, only 28 miles; so that the average train-run length on that day, on the Boston & Maine Railroad, was only 54 miles.

This exhibit shows the distribution of these trains between runs of 100 miles or more and those between 50 and 99 miles, and those of less than 50 miles. It shows that 50 per cent of the trains

48 ran less than 50 miles, 36 per cent were between 50 and 99 miles, and only 13 per cent ran 100 miles or more.

The effect of the local service is shown throughout the statistics which are headed "Units of Performance."

The trainload is shown in the last block of figures, the second column: In fast freight, 619 tons; in slow freight, 596; in locals and mixed trains, 189, giving an average for all classes of 497.

In the column which is headed "Per Cent Gross Ton Miles to Rating Ton Miles," which is the index of trainloading efficiency, it is shown that in fast freight the percentage was 82, in slow freight, 85, and in locals 50 per cent, bringing the average down to approximately 69 per cent.

In train speed the fast freights were able to make 13.1 miles per hour, the slow freights 11.6 miles per hour, while in local service the average speed was only 7.8 miles per hour, giving an average for all service of 10½ miles per hour.

The next column is of peculiar significance—the percentage of cars handled through. That means the percentage of cars which started from the originating terminal and were carried through in the train to the end of the run. In fast freights 64 per cent approximately of the cars were carried through; slow freight, 57 per
49 cent; in locals, 25 per cent, making an average for all classes of service of 47 per cent. That gives an indication of the large amount of dropping and picking up of cars.

Then the final column gives some light on costs, taking only the wages of train crews per 1,000 net ton miles—the wages of these particular train crews on that day: In fast freight service, 68 cents per 1,000 net ton miles; in slow service, 88 cents; in local service, $4.27—five times as much as in fast and slow freight service combined.

The witness is conscious of the difficulties in New England of increasing the average train run in miles. Of course, it does not mean that the Boston & Maine Railroad paid a full day for every one of those 28-mile local runs. Some of them were turn-around runs; some were combinations of a short run on a branch and a short run on the main line. The witness' impression is, knowing something of the degree of care with which the train schedules are scrutinized by those in authority, that the service is operated with a reasonable degree of efficiency. If a train is run 50 miles within 8 hours, the compensation of the train and engine men is the same as though it ran 100 miles; and on that day 50 per cent of the trains on this road ran less than 50 miles. That is not 50 per cent of the crew runs.
Some of those crews would double. This is a train exhibit,
50 not a crew exhibit. But the net effect is shown in the last column, which shows the wages. The best they can do, under the best methods of operation that they have found it possible to devise, it costs $4.27 a thousand net ton miles in local service, as contrasted with 68 and 88 cents in the fast and slow freight services.

There are two reasons for that: First, the train load is very small. It is only 189 tons. The second reason is that the run is short and there is therefore a large amount of constructive mileage. And the third reason is the slow train speed, which is only 7.8 miles per hour. That is a necessary result of the congestion; the difficulty of operat-

ing local trains in the congested section of New England. Witness does not mean to say that no improvement is possible. All that the witness says is that he is conscious, having had some practical experience in that field, of the difficulties of improving the train operation where a large number of local trains must be run. The cost is necessarily high.

If comparative data for the trunk lines or the C. F. A. lines were available, an interesting comparison might be made between the figures which have just been given and those of roads like the New York Central, the Pennsylvania, the Baltimore & Ohio, or the Lackawanna; but unfortunately there are no figures that give that information.

51 The figures in Exhibit 16 were all taken from the reports of the United States Railroad Administration, summary OS-7.

Cunningham Exhibit No. 20 shows the relation between property investment and revenue ton miles. It is impossible, of course, to make an accurate separation of the investment accounts to show what part of the investment is devoted to freight and what part is devoted to the passenger traffic. Such a large part of the total investment is devoted to the two services jointly that no authorities will agree as to the proper method of allocating the investment.

Witness has adopted, and does so with qualification, the method of separating the investment on an operating expenses basis, and has taken the data which appears in the record of the Railway Mail Pay Case, I. C. C. Docket No. 9200. In that case Mr. Wettling, the statistician for the carriers, prepared a complete separation of operating expenses for the month of April, 1917 (Wettling Exhibit No. 10). That is the only complete separation of operating expenses that the witness knows of. It was for a normal month in 1917, before conditions were upset by our entrance into the war.

The formula used by Mr. Wettling had the qualified sanction of the Commission; the figures at least were accepted as evidence in arriving at the decision in the Railway Mail Pay Case. The data are given in detail for each road, so that we could make our separa-

52 ration between New England and the rest of the Eastern territory and arrive at an average percentage chargeable to freight service of 63.03 per cent in New England and 76.27 per cent chargeable to freight service in trunk and C. F. A. territory.

Assuming that there is a relation between the operating expenses for freight service and the property investment for the freight service, the witness has applied the freight service percentage of total operating expenses to the total cost of road and equipment in New England and in Trunk Line territory, and has computed the property investment per one million revenue ton miles per year. That figure is shown in Exhibit 20 and indicates that on that basis the property investment in New England for each million revenue ton miles per year was $58,605, and the corresponding figure for the Trunk and C. F. A. lines was $34,958, giving a ratio of New England to the Trunk and C. F. A. lines of 166 per cent, approximately. In other words, the investment in the New England roads on a ton-mile basis, with the property divided as stated, is 66 per cent greater

in New England than in the Trunk line territory. That is the result of the lower density of traffic, the greater density of terminals, and the shorter haul.

53 The figures in Exhibit 20 exclude from the New England lines the Canadian Pacific and the Boston & Albany, because they were defendants in the case. The same logic, of course, would require that the Grand Trunk be excluded. It was an inadvertence in allowing it to stay in. It was left in for no particular reason; it was put in in the beginning, and we forgot to take it out until it was too late to go over these exhibits.

Witness does not know just what would be the effect of taking the Grand Trunk out of this, but his impression is that it would have very little effect on the average, because the density of the Grand Trunk in New England is 1½ million, just about the same as the Boston & Maine and the New Haven, and the two principal factors in that are the investment, in the first place, and the ton miles in the second place. So far as ton miles are concerned, the inclusion or exclusion of the Grand Trunk would have very little effect, but I am without any information right here as to what the Grand Trunk investment per mile of road is.

Cunningham Exhibit No. 20 shows that in New England the property investment was 66 per cent more per ton mile, and of course that means that their net operating income has to assume that much greater carrying charge per ton mile.

54 It is admitted that the basis is but roughly approximate. It is offered because no completely satisfactory basis is available. The operating expenses basis of apportionment affords a rough measure, and is offered merely as an approximate indication of the relatively heavy additional burden which the New England roads are bearing because of the nature of their freight traffic and its necessities in density of terminal, station and yard facilities.

Cunningham Exhibit No. 21 shows freight traffic movement and car performance. This exhibit shows the effect of the handicaps of relatively low traffic density, relatively high density of terminals, stations and yards, and the relatively short haul.

Because New England is primarily a terminal for a large part of the traffic interchanged with the trunk and C. F. A. lines, the average freight car makes a relatively short road haul in New England. There is, therefore, a high ratio of terminal time to road time, and as a result the average car miles per car day is relatively low. As the business which New England originates has a high proportion of manufactured products, as contrasted with the raw materials which originate elsewhere, the average carload is relatively low. In percentage of loaded to total car miles there is very little difference, but in this case the percentage is higher in New England than in the rest of the Eastern territory.

55 The significant figures on the exhibit are that the carload in New England was 23.5 tons as compared to 30.3 tons in trunk and C. F. A. territory. The car miles per car day were 16.1 in New England, as contrasted with 21.9 in Trunk and C. F. A. territory. The per cent. of loaded to total car miles shows 72 per cent.

in New England and 67.7 per cent. in Trunk Line and C. F. A. territory.

These three factors multiplied into each other give the resultant of freight car utilization as expressed in net ton miles per car day. That combines the three factors. In New England, particularly, because of the slow movement, the net ton miles made each day by each freight car were 273, and in the Trunk Line and C. F. A. territory the average was 4.49. That shows that the New England utilization of freight cars was only 61 per cent. of that of the Trunk Lines; or, to express it another way, the trunk lines were 64 per cent. better in their performance of freight cars. Yet that means that the trunk lines and C. F. A. lines were able to produce 64 per cent. more tons per car per day than the New England roads, or that for a given number of ton miles in New England the railroads were obliged to use 164 cars in contrast to 100 cars in Trunk Line territory.

These same characteristics have their effect on the trainload, which is shown in Exhibit 22. The average trainload in 1919 in New England was 492; in Trunk Line and C. F. A. territory
56 it was 857. The Trunk Line trainload was 74 per cent. better than that in New England, which means that the New England roads had to run 174 miles to carry the same tonnage that would be handled by 100 train miles in trunk and C. F. A. territory. That is due to the shorter haul, the smaller average carload, and the other operating disabilities which have been referred to.

These disabilities are further illustrated in Cunningham Exhibit No. 23, which shows the freight locomotive performance. Because of the relatively large number of short runs, the relatively small carload, and the relatively low trainload, the New England roads in 1919 were able to produce but 20,724 net ton miles per freight locomotive day, while the Trunk and C. F. A. lines were able to produce 37,087. This means that New England had to own, maintain and operate 79 per cent. more freight locomotives than the Trunk and C. F. A. lines for any given volume of traffic. That is to be considered in connection with the statement already made that the New England roads have to own, maintain and operate or pay per diem charges on 64 per cent. more freight cars for a given volume of traffic; that is, 79 per cent. more locomotives and 64 per cent. more freight cars for the same volume of traffic.

Not connected directly with operating expenses, but affecting the income account, is the very important item of
57 freight car hire or per diem, and its importance justifies a somewhat extended consideration.

Mr. Brigham stated this morning that the existing divisions were established many years ago, and all of them prior to the adoption of the per diem basis in 1902. Prior to 1902 the basis for the settlement of car hire as between carriers was mileage, and at the time per diem was adopted the rate was 6 mills per car mile. The car mile basis, of course, was very much more favorable to New England, because, detention being higher there, there was no penalty such as the per diem basis visits on New England when cars are not released. The theory of the car mileage plan was that since the freight revenue

went with the loaded car miles, the car hire ought to follow the car miles, and should be proportional to mileage. When the car was not in motion, it was not earning revenue; neither was it running up car hire charges against the using road. Under present conditions, with the per diem basis, the New England roads must pay the same rate per day whether the car is moving or standing at terminals, but, with the exception of the demurrage charge which the consignee pays after the expiration of free time, the car earns nothing in revenue while it is not producing ton miles.

58 The per diem basis was adopted as a means of speeding up the movement of cars by offering an incentive to the railroad to reduce car detention. Undoubtedly it is a better basis than car mileage for universal adoption. It is based on the theory that the rate for car hire should compensate the owner for the cost of owning the car, including maintenance, taxes, depreciation and interest. The theory underlying the mileage basis was that the charge should go with the revenue derived from the use of the car. But, like all plans for universal adoption, the per diem plan has worked to the advantage of certain roads and to the disadvantage of other roads. The per diem rate of 20 cents, as first adopted, was equal to the former mileage rate for 33⅓ miles per car day. 33⅓ times 6 mills gives the 20 cents per day. That being the case, it follows that a road with an average movement per car day of less than 33⅓ miles was penalized, while the road that had an average movement in excess of 33⅓ miles was favored by the per diem basis.

The New England lines were hit hard by the change, as their average at that time was between 12 and 15 miles per day. Looking at the subject from the viewpoint of their individual interests, and having in mind the large additional sums which they would have to pay out for car hire, they objected strongly to the per diem plan when it was first proposed, but they were overruled by

59 the majority. Since the adoption of the per diem basis, as the rates have been increased from time to time from 20 cents per day in 1902 to $1 per day on November 1st last, New England has protested, emphasizing the fact that the burden falls heaviest on the terminal carriers, and that the New England roads are peculiarly in the class of terminal carriers. It has, however, been impracticable to devise any measure of relief to New England which would be agreeable to the majority, and the New England roads continue to suffer in comparison to the trunk lines and other carriers with less terminal service and longer road hauls.

The witness does not suggest that the per diem basis is an improper one, nor that the roads should revert to the mileage basis, but merely emphasizes that the factor of per diem should be given weight in connection with this petition.

When the per diem was adopted in 1902 the average miles per car day in New England were between 12 and 15, so that the mileage basis gave a charge of approximately 7 to 9 cents per day in New England. The first per diem rate was established at 20 cents, and since 1902 it has gone up; was reduced and then advanced again—there were eight or ten changes altogether—and finally was set, at

the expiration of Federal control, at 90 cents a day, and more
60 recently (or, to be exact, on November 1st last) set at $1 a day.

From the foregoing it will be noted that since 1902 the per diem rate has advanced from 20 cents to $1, an increase of fivefold. If the mileage basis had been continued, and if the mileage rate had increased in the same proportion as the per diem rate, the mileage rate would now be 3 cents—6 mills times 5. In 1919 the average movement per car day in New England was 16.1 miles. This multiplied by the average rate of 3 cents, on the basis that witness has mentioned a moment ago, would give a rate of 48.3 cents per day as an approximation of what the New England roads would now pay per car day if the former mileage plan had continued and had been increased in the same percentage that the per diem rate has been increased since 1902. With the present per diem rate of $1, the difference between it and the equivalent mileage rate of 48.3 cents is 51.7 cents, or an increase of 107 per cent. The substitution of per diem for mileage means that car hire is costing the New England roads 107 per cent. more than the mileage basis continued in the same proportion of increase.

The effect of the change may easily be expressed in dollars and cents if we assume that the per diem rate is an accurate measure of the cost of owning a car. That is what it is supposed to be.
61 Under that assumption it makes little difference whether a road uses its own cars or borrows cars from its neighbors. In 1919 the freight car days on the New England roads were 34,213,518, and their freight car mileage was 552,245,000. On the per diem basis of $1, these days were equivalent to $34,213,518. On the mileage basis, if we take the 3-cent rate, assuming that the mileage rate of 1902 had been increased in the same proportion as the 1902 per diem rate has since been increased, these car miles would have been equivalent to $16,567,350. These figures include both railroad owned and private freight cars, but the inclusion of the private cars, now paid for on a mileage basis, has only a slight effect on the comparison. The difference between the per diem basis and the mileage basis means that the difference in the basis or the change in the basis is causing the New England roads a loss of approximately $17,646,168 per year.

It may be said that the remedy for the New England roads is to own more cars and thus to reduce their debit balance. To a certain extent this is true, and the New England roads which are short in equipment would have purchased more cars if they had been financially able to do so. But owning more cars will not relieve New England of the burden. The cost of maintaining and paying interest charges on the additional cars would practically offset
62 the saving in per diem, assuming that the per diem rate is held at the point which just represents the cost of ownership.

There are two theories of car ownership—at least two. The first theory is that a road should own just as many cars as it uses normally for all of its freight traffic, both local and interline. The second theory is that a road should be required to own sufficient cars to take

care of the traffic which it originates. The first theory calls for a larger car ownership in New England, because New England is not a producer of raw materials. On the second theory the car ownership of New England is now nearly sufficient, but it would put a heavier burden of car ownership on the roads which originate grain, coal, lumber, cotton, wool, iron and steel products, and other raw materials. No authoritative body has set its seal of approval on either plan, and the present standard of car ownership is largely a compromise between the two theories, that is, for each road to own sufficient cars for local needs and either more or less than its pro rata share of the cars used in joint traffic.

If New England owned sufficient cars to avoid a debit balance in the months of heavy traffic, it would have a surplus of cars in remaining months of the year, and because the originating roads would insist upon loading their originated traffic into New England
63 in the cars of the originating roads, the New England roads would have to use those cars, when empty, for the return load of the smaller volume of finished products which originate in New England. The use of New England cars for those products destined to the Central, Western and Southern States would merely increase the empty car mileage by requiring an additional empty movement of foreign cars out of New England, and the lines which originate the raw materials would retaliate by sending the New England cars home empty and using their own cars to load their raw materials into New England. This is just what happened in periods of car surplus, so that a few years ago the New Haven road, for example, even though its ownership was sufficient to square with the first theory that the owned cars should be sufficient to take care of all business, both local and interline, was forced to pay a debit balance because it had to receive foreign cars under load and to utilize those cars for the smaller tonnage returning, while their own surplus New Haven cars, which could not be sent off its lines, were stored.

If the per diem meets its objective of measuring, as nearly as may be, the cost of owning the car, then it makes no difference whether the car is at home on your own road or on a foreign road earning per diem.

64 Witness' study of the per diem problem leads him to conclude that it is a thing which is inherent in the New England road, because of its terminal character, that it is on account of the relatively heavier detention *to* cars, and this heavier detention is due to the fact that each car is handled more times per any unit of road distance. The average haul is shorter. The car detention is not while the car is actually in trains. The detention is mainly when it is being placed for loading, when it is being made up into trains, when it is being placed for unloading and when it is being unloaded. That process is gone through with every time a car is loaded for a destination. If the destination involves a road haul of 200 miles in one case and 100 miles in another case, obviously the detention is going to be very much greater in the case of the road with the 100-mile road haul. If a manufacturing community re-

ceives raw material and sends out finished product, necessarily there must be greater detention there than at other points. To some extent detention is due to the inadequate terminal facilities there, but even with very much better facilities, there are those inherent features which would cause a relatively high detention.

The demurrage collections are such a small proportion of the total cost of car ownership that witness did not regard them as a very important factor. Witness would think, though, that the demurrage collections would be relatively heavier in New England than in the Trunk and C. F. A. territory, because the average detention is greater. The average detention that is chargeable to the shipper is to some extent reflected in the demurrage collections.

In the consideration of operating costs, the witness is concerned primarily with the effect of these operating handicaps upon the operating ratio and upon the net operating income, and approaches them from that viewpoint.

Cunningham Exhibit No. 24 shows the operating revenues, the operating expenses and the operating ratios of the individual New England roads, and the totals for New England and for the rest of the Eastern territory.

The footnotes on the exhibit show the source of the information, the major part of which was obtained from the United States Railroad Administration statistics. It is in the transportation ratio that the handicaps of the New England railroads are peculiarly apparent.

During the test period the transportation ratio in New England was 39.8 per cent, as contrasted with 35.4 per cent in Trunk Line and Central Freight Association territory. During the Federal control period the transportation ratio in New England was 51.2 per cent, as compared with 44.6 per cent in the rest of the Eastern territory. The percentage of increase in the transportation ratio has been greater in New England than it was in the Trunk and Central Freight Association territory.

Cunningham Exhibit No. 25 deals with freight yard costs.

Before touching upon that the witness wishes to refer to station expenses which are not covered by an exhibit. It was impracticable to get a complete statement of station costs subdivided between the freight service and the passenger service; but some indication of the relativity of the figures may be obtained by comparison of the Boston & Maine and the New Haven, on the one hand, and the Pennsylvania, Baltimore & Ohio, and Erie, on the other hand. The comparative figures were taken from the reports of those roads to the Interstate Commerce Commission in 1917, when a requirement was in effect that the expenses should be divided between the freight service and the passenger service.

On the Boston & Maine Railroad the total amount of station service chargeable to freight service was $3,581,772. The total revenue ton miles for that year were 3,510,133,000.

Dividing the freight service proportion of the total station expenses by the total ton miles gives an average cost of $1.02 per 1,000 ton miles.

The New Haven road had a charge of $5,828,000 to freight
67 station service, and had a total ton miles of 2,955,321,000.
Applying the same process gives an average cost of $1.97 per 1,000 ton miles; and the average of these two New England roads is $1.45.

The average for the three trunk lines on the same basis was 47 cents—47 cents for the three trunk lines—as compared to $1.45 in New England.

The Baltimore & Ohio charge to freight station service was $6,912,654, and its total ton miles 18,053,294,000; the average cost per 1,000 ton miles, 38 cents.

For the Erie Railroad the freight service station charge was $4,771,210, and the total ton miles 9,424,493,000; an average cost of 51 cents per 1,000 ton miles.

For the Pennsylvania Railroad Eastern Lines the freight service station cost was $15,186,490, and the total ton miles were 29,838,385,000, with an average station cost per 1,000 ton miles of 51 cents.

Cunningham Exhibit No. 25 relates to freight yard costs. Here they may show the comparative data for the New England roads as a whole and for the Trunk Lines as a whole, because there is a method of dividing yard costs available from the published statistics, namely, the locomotive switching mile basis.

Yard freight switching locomotive miles and passenger
68 switching locomotive miles are reported separately, and since in each class of service the Commission's rules require that the mileage shall be computed on the basis of 6 miles per hour, the mileage as reported is virtually locomotive hours multiplied by 6. The locomotive mile basis, therefore, is really a time basis, and may properly be used by dividing the total yard expenses in proportion to the locomotive hours devoted to each of the two classes of service. Such a separation is made in Exhibit 25, and gives us the freight service proportion of yard expenses. By dividing that figure by the ton miles they obtain the cost of yard expenses per 1,000 net ton miles.

In 1919 the cost in New England was $1.494. The cost for the Trunk and C. F. A. Lines was 96 cents. This increase of 56 per cent in the unit cost in New England is the reflex of its traffic and operating characteristics. These have frequently been mentioned in detail.

These yard costs in New England would be further increased over those of the Trunk and C. F. A. lines if they included the cost of train switching. That cost goes into train expenses, instead of into yard expenses, although the switching performed at way stations by road locomotives and train crews is properly a charge
69 against yard service, since it takes the place of work which at the larger stations is done by yard locomotives and yard crews.

Compared with the road freight locomotive mileage, the train switching mileage is greater in New England than on the Trunk and C. F. A. lines. In 1918, the train switching miles in New Eng-

land was equivalent to 11.7 per cent of the road freight locomotive miles. The corresponding figure for Trunk and C. F. A. territory was 8.4 per cent, as contrasted with 11.7 per cent in New England.

Cunningham Exhibit No. 26 deals with freight train costs. It shows the ton miles, the train miles, the freight proportion of operating expenses of train service, the cost per freight train mile and the cost per 1,000 net ton miles; these costs in each case being divided between wages and total. Beside wages, the total cost includes those expenses which are classified as train expenses under "transportation expenses," namely, locomotive fuel, other locomotive supplies, engine house expenses, train supplies expenses, and train wages.

The exhibit shows that there is very little difference in the wages cost per train mile; but that difference is against New England and is a reflex of its shorter train runs.

The total cost per train mile is very little different, and
70 that is because of lighter trains. When we get to the real index of train efficiency, the cost of 1,000 net ton miles, we see a vast difference.

The wages cost in New England is 84.1 per cent greater than in the other territory, and the total direct costs are 77 per cent greater than in Trunk and C. F. A. territory.

A substantial part of the 77 per cent greater ton mile cost for train service expenses in New England is in the fuel cost, because of the greater distance from the mines. During the year 1919, the average cost per ton in New England was $5.03, and on the Trunk Lines and C. F. A. Lines the average cost was $3.10.

The exhibit which supports the statement as to fuel cost will be No. 27—and also No. 28. Exhibit No. 27 shows the tons of fuel consumed during the calendar year 1919 on the basis of the cost of September, 1919.

Exhibit No. 28 shows the cost of 1919, based on the average unit cost per ton of the 8 months ended August 31, 1920.

In September, 1919, the average cost per ton in New England was approximately 63 per cent more than the cost for the Trunk and C. F. A. lines, while during the 8-months period of 1920, the average cost on the New England roads was 94 per cent greater than the cost to the Tunk and C. F. A. lines.

71 This shows that we take the difference between the New England cost and the Trunk Line cost, multiply that by the average consumption in 1919, and it means that the New England roads are carrying an additional cost of $10,700,000; or, if we take the basis of 1920, the difference between the $7.37 as the New England cost and the $3.79 as the Trunk Line cost, that, multiplied into the 1919 consumption, means that New England has to bear an additional burden of $19,600,000 as the additional cost of fuel.

Witness refers to the exhibit introduced by Mr. Brigham as showing that the recent increases in freight rates will add further to the fuel costs of the New England roads, and that this increase will add a corresponding amount to the freight revenue of the Trunk Lines, which bring the coal from the mines to tidewater or to the Hudson River gateways.

Cunningham Exhibit No. 29 is an attempt to show the revenue and the cost per ton mile of the individual New England lines and the totals of New England and Trunk and C. F. A. lines.

This case deals primarily with the freight service, and it is desirable, therefore, to utilize for this study such available data as may throw light on the revenues and expenses of the freight service
72 by itself. Unfortunately, there are no complete figures for any extended period which for these two groups of railroads will afford a comparison of the operating ratio and the net operating revenue for the freight service alone.

In 1915 the Interstate Commerce Commission promulgated a classification for separating expenses as between the two classes of service, but considerable latitude was allowed to the railroads in reporting certain items of expense as undivided. So many roads took full advantage of the permission that it was impossible from the reported figures to get any complete separation of operating expenses, because such a large part was reported as undivided. Reports were made on that basis, however, for 1915, 1916 and 1917.

Then, as a war economy, the Commission gave the railroads permission to discontinue the separation of expenses in 1918 and 1919; but, effective January 1, 1920, the Commission has prescribed a very much better classification which provides in every particular for a complete separation.

From 1920 on it is possible to make a complete analysis of freight train mile costs and passenger train mile costs; but the figures for 1920 will not be available until next year. They would not help any in this case.

So the witness has been obliged in this case to take ad-
73 vantage of the only complete exhibit of the kind that he knows of, and that is the Wettling Exhibit in the Railway Mail Pay case.

He has taken the Wettling Exhibit for April, 1917, and ascertained the proportion of total operating expenses that were chargeable to the freight service in that month, and on the assumption that April, 1917, was a fairly typical month, and that conditions have not changed very much since April, 1917, with respect to the comparative volume of freight traffic and passenger traffic, witness has applied the April, 1917, percentage to the total operating expenses for 1919. That, of course, gives an approximate result, because it is possible that the actual division for the total year 1919 might be somewhat different than that of April, 1917. Witness tested it with such data as he could get in individual cases, and believes that there would be very little difference.

In the case of the Boston & Maine the percentage was almost exactly the same for the first eight months of 1920 as it was for April, 1917; but the witness has gone into detail in giving this qualification, so that there will be no misunderstanding about the possible limitations of its showing.

The net result is given in this Exhibit 29; and these are
74 the significant facts:

All of the basic figures are given for the New England

roads, and the totals for the Trunk Lines and C. F. A. Lines are obtained as stated in the footnotes on the exhibits.

The operating revenue per ton mile in New England was 13.85 mills. The operating expenses were 14.31 mills. In other words, it cost, in operating expenses alone, .36 of a mill more per ton mile than the revenue per ton mile. This operating expense item does not take into consideration taxes or other deductions from income.

The figures for the trunk and C. F. A. lines were as follows:

Revenue per ton mile, 8.92 mills; operating expenses per ton mile, 8.60 mills, leaving a net revenue per ton mile of .32 mills.

That shows that under the basis used, and under the conditions of 1919, the New England roads were unable to pay their operating expenses on a ton mile basis, and they earned a deficit of .36 of a mill; whereas the trunk lines obtained a net operating revenue of .32 of a mill. The difference between the two is obtained by adding them. In other words, the Trunk Lines, under that basis, under the conditions of 1919, were .68 of a mill better off on each ton mile than were the New England roads.

75 It is conceded that, of course, this division of expenses may not be entirely accurate. Witness has already made that qualification. But the indications are consistent with the results of operation as a whole. The statistics of the United States Railroad Administration show that under the increased wage scale and the higher material costs, the net operating income of the New England roads during the 26 months of Federal control was relatively less, measured by the test period standard, than the net operating income of the Trunk Lines measured by the same standard.

New England during Federal control was able to earn but 12.8 per cent of its standard return, while the Trunk and C. F. A. lines were able to earn 48.9 per cent of their standard return. In relative terms, New England's net earnings, compared with the test period standard, were but one-quarter as favorable as those of the Trunk and C. F. A. lines.

Assuming that the divisions under which the two groups of railroad have been working were practically all established prior to the year 1902, and summing up briefly the factors which have come into the problem since then and which have borne heavily on the New England roads, and to their disadvantage rather than to the Trunk Lines, the first factor is the per diem factor. Then, throughout operating expenses, as a whole, the tendency has been to

76 bear more heavily on the terminal group of expenses. That is, as witness sees it, the advance in the science or art of transportation has been greater in train service than in station and terminal service.

The economies, which have been somewhat spectacular since 1902, have had to do mainly with economies in train operation. On the other hand, there has not been the same opportunity to bring about substantial economies in terminal operation; and, on the other hand, the demands for terminal service have been greater, so that the terminal costs have either remained as they were or have increased, while train service costs have decreased.

As New England has a very heavy proportion of its expenditures in the group of terminal station and yard expenses, it naturally has been under greater handicaps in this development of things than have the roads with the longer line haul.

The factor of wage standardization has borne more heavily on certain of the New England roads than it has borne on the roads in trunk line territory. The tendency has been for fuel and material costs to increase relatively more in New England than in the points nearer to the primary markets.

77 In answer to a question whether in his opinion, as a result of his study, a mileage prorate is a fair standard to establish with reference to these divisions between roads situated as the New England roads are and roads situated as the trunk lines and C. F. A. lines are, the witness said:

"I should prefer not to express any opinion on traffic matters, because I am not so familiar with methods of apportionment of revenue as I am with operating statistics. I could not back up any opinion I might give on that point."

J. E. SLATER, called as a witness by the complainants, testifies:

That he is special assistant to the General Manager, New York, New Haven & Hartford Railroad, and has occupied that position for about one year and a half, and that he has heard the testimony of Prof. Cunningham.

Witness has made a study of the situation on the New York, New Haven & Hartford, with a view to determining the applicability to that road of the principles laid down by Prof. Cunningham. The results of his study are that the testimony presented by Prof. Cunningham has indicated the handicaps under which the New England railroads labor in the way of very heavy expenses. It has been shown in the various groups of transportation expenses that

78 the costs for the New England lines are very much in excess of the costs on the Trunk Lines. For example, in freight station operation, the cost per 1,000 net ton miles on the New England lines was $1.50 as compared with 68 cents on the trunk lines.

The cost of freight yard operation was $1.49 for the New England lines as compared with 96 cents for the trunk lines, while the cost for train operation per 1,000 net ton miles was $3.82 for the New England lines, as compared with $2.16 for the trunk lines.

Prof. Cunningham has indicated in a general way the reasons for these high expenses. It is the witness' purpose to amplify these reasons and to point out with specific information why these high costs are brought about by conditions over which the New England lines have no control.

The principal causes for the high costs are four:

First, the diversity of routes and diffusion of traffic; second, the terminal character of the traffic; third, the low density of traffic, and, fourth, the short haul. Each of these causes has its importance, but their combined effect is cumulative. Each one by itself might

not be as impressive, but taken together, they bring about high costs which, for the most part, will always be present in the New England situation.

79 Witness has made a study of the New Haven traffic, with a view to determining the percentage of overhead traffic handled by that line. The percentage of overhead traffic on the the New Haven is about 7 per cent. The traffic is a peddler service. It is true that the trunk lines, the C. F. A. lines, and all railroads have a certain amount of this service. This may be due to the fact that a great deal of traffic originates on their lines or that it terminates there. Nevertheless, it is entirely evident that along with the large amount of local service which the roads in trunk line and C. F. A. territory operate, there is a large amount of service which runs from one end to the other of their main lines and on which there is no heavy initial or final terminal expense.

The points of production and consumption on witness' lines are very much scattered. Not only does most of the traffic originate or terminate on their lines, but the originating points and terminating points are scattered broadcast. While it is true that there are certain manufacturing districts which surround Bridgeport, Waterbury, Hartford, New Haven, Providence, Worcester, Fitchburg, Lowell, Manchester, Lawrence, Haverhill, etc., there are great numbers of large and small manufacturing towns throughout the New
80 England States. Many of these towns are not along the main lines, but on secondary lines and branches.

For example, the important manufacturing city of Holyoke, while on a main line of the Boston & Maine, is at the end of a branch of the New Haven. The important manufacturing towns of Southbridge and Marlboro are at the end of small branch lines. The same is true of Fall River and New Bedford, which are going the most important manufacturing cities of the United States in the textile industry.

Numerous other examples could be given pointing out the diffusion of the manufacturing industries throughout the New England States. The widely scattered character of these industries has a corollary in the diversity of routes which are made necessary to serve them. The map of the New England railroads expresses this much more clearly than could any narrative. He can also be indicated in the fact that the main line of the New Haven road, 224 miles in length, is but 11½ per cent. its total mileage. It is also indicated by the fact that on the Boston & Maine the principal freight route from Rotterdam Junction to Boston is 203 miles, as compared with 2,500 miles for the system.

The New England railroads, therefore, are not benefited by the advantage which comes from enormously heavy through
81 tonnage with a long haul and relatively few terminal handlings. The large number of secondary lines and branches makes necessary a corresponding large number of small switching yards. The switching mileage in many of these yards is not large, but the large number of small yards constitutes a heavy expense, which is practically fixed in character.

There must be, of necessity, at the junction of many of these branch lines and main lines, yards which are made necessary to take care of the local service up the branches. For example, about 34 miles out of New York is the City of Stamford, from which a small branch runs north to New Canaan. This branch makes necessary a small yard at Stamford.

A short distance further along the main line, about 40 miles from New York, is the City of South Norwalk. From this point a line runs up to Danbury and Pittsfield. A yard, therefore, is made necessary at South Norwalk to take care of the consolidation of the traffic which is going to move up the line to Pittsfield, and necessitating another small yard at that point.

51 miles from New York is the City of Bridgeport, and here another line runs north. A few miles beyond that is a very important feeder running up into the Naugatuck Valley, which serves
82 the important cities of Ansonia, Naugatuck and Waterbury.

The well-defined through routes of transportation can be reduced to only 3 or 4.

Moving eastward out of Harlem River there is, of course, the main line from New York to Boston, 224 miles. This is naturally the heaviest traffic route. Outside of this route there is the line from Devon to Winsted, mentioned before, which serves the Naugatuck Valley. There is fairly heavy traffic on this route.

Then there is the line from New Haven to Springfield, and there is a fairly heavy traffic on that route.

There is one further heavy route from Maybrook to Waterbury and New Haven, which is the second heaviest freight route on the New Haven road.

Outside of these routes, however, although there is a large amount of traffic in bulk moving over the combined branch lines, yet there is practically no very heavy well-defined route where the New Haven has the benefit of dense traffic permitting them to run heavy trains from one end of these branch lines to the other.

Witness has made a study of a month's actual movement of cars through the principal gateways of his line, with a view to telling the Commission exactly how these cars are handled or dis-
83 tributed to the various parts of their system. This study was not made for the purpose of this hearing. It was made for the benefit of the New Haven road, to assist them in lining up new freight routes in connection with the new yards which are being developed on the New Haven road. It is, therefore, free from any indication of being made up for a particular purpose, but has been devoted to this purpose inasmuch as it expresses in a more striking way than any other the difficulties which confront the New Haven road in particular and the New England roads in general on this diffusion of traffic.

This study embraced the tracing through from the two important gateways from trunk line territory of approximately 54,000 cars, 36,000 of which moved through Harlem River and approximately 18,000 through Maybrook.

A considerable number of cars were destined for the New York

terminals of the New Haven road and for smaller stations less than 50 miles out of New York.

The first important diverging point is Bridgeport, 51 miles from Harlem River. Between Harlem River and Bridgeport, 1,831 cars, or 5.1 per cent., were delivered or diverted from the main line. At Bridgeport, 7,500 cars, or 20.8 per cent., were either diverted from the main line, or terminated at that point.

84 On approximately 26 per cent. of the traffic, therefore, the main line of the New Haven was used for only 50 miles.

Of the traffic diverging at Bridgeport, a considerable amount was for the city proper and the balance for Waterbury, a distance of 31 miles, and for 10 other districts in that vicinity.

In other words, this traffic moved 51 miles over the main line of New Haven and then spread practically into 10 different sections, each of which had a certain proportion.

From Bridgeport, the next important diverging point is New Haven, 69 miles from Harlem River, where 12,758 cars, or 35.5 per cent., left the main line. Over 60 per cent. of the traffic, therefore, diverged within 70 miles of its originating point on the New Haven road.

Of the traffic diverging at New Haven, a considerable portion was for New Haven proper, a smaller amount for Hartford, a portion for the Boston & Maine and Boston & Albany at Springfield, and the balance was distributed over 14 different sections.

Moving eastward from New Haven, the next diverging point is Saybrook Junction, where 73 cars, or 2/10 of 1 per cent., diverged; this traffic moving up a small branch line running north from that point.

85 About 30 miles beyond Saybrook Junction is New London, where 2,114 cars, or 5.9 per cent., left the main line. These cars for the most part moved north over the branch to Worcester and to the branch lines connecting with this secondary line.

At Providence, 3,164 cars, or 8.8 per cent., went from the main line or terminated; this traffic moving over a large number of branches to 15 different sections.

Following Providence, the next diverging point is Attleboro, where 2,824 cars, or 7.7 per cent., moved off the main line.

The movement of this traffic is interesting as an example of the various routes which traffic must take to reach its ultimate destination.

The traffic out of Attleboro moves to Taunton, from which one portion goes to South Braintree, where it is split into six different routes; another portion to Middleboro, where it splits into six different routes; another to Fall River; another to New Bedford, and the balance to small branches close to Taunton.

Of the 2,824 cars diverging at Attleboro, 660 proceeded through Taunton and South Braintree to the six different districts mentioned above; 721 via Taunton and Middleboro to the six districts

86 mentioned; 283 to Fall River and Newport; 563 to New Bedford; 240 to the miscellaneous branches in and about Taunton; the balance being dropped off at Attleboro and at local points between Attleboro and Taunton.

This shows very clearly how well spread out the traffic is over this district and how small a portion is concentrated in and about a few industrial centers.

At Mansfield, the next diverging point, 594 cars, or 1.6 per cent., left the main line. The balance of the traffic moved to Boston; but of the total number of 36,053 cars which originally left Harlem River, only 4,639 or 12.9 per cent., went the entire length of the main line to Boston.

When it is further realized that the main line of the New Haven is only 11½ per cent. of the total miles of road, the diversity of routes is even more clearly indicated. Moreover, even on its main line, the New Haven does not have the benefits of high density of traffic for the entire length, but has a density which constantly diminishes and which is very much lighter at the end of the route than at the beginning.

The witness has made a like study with regard to the cars received at Maybrook. The study of the traffic out of Maybrook illustrates the same truth. Of a total number of 17,940 cars, 7,688
or 42.8 per cent., diverged from the main line within a dis-
87 tance of 81 miles from Maybrook. The main line of traffic for the cars received at Maybrook is to New Haven, where it joins the traffic from Harlem River.

The 7,688 cars, or 42.8 per cent., diverged at Hawleyville or before they reached that point; Hawleyville being 81 miles from Maybrook. This traffic diverging at Hawleyville went to several branch lines close to that point—to Waterbury and Hartford, to the line running north from Plainville to Northampton, and the Boston & Maine Railroad, and to the branch lines in and about Hartford.

Furthermore, 10,642 cars of the original 18,000, or 59.2 per cent., left the main line at New Haven or before; the distance between Maybrook and New Haven being 122 miles. At or before New London, a total of 11,875 cars, or 66.2 per cent., had left the main route.

It was finally found that of the original 18,000 cars, approximately only 1,153, or 6.4 per cent., went all the way through to Boston.

The distance from Maybrook to Boston is approximately 282 miles. Along this route only 6.4 per cent. of the traffic moved the entire distance.

As illustrating further the diversified nature of the traffic,
88 witness only needs to point out the location of the principal stations on the New Haven, where 70 per cent. of the tonnage forwarded or received has its originating or final terminal. Witness has taken 53 stations. Of these only 16 are on the main line between New York and Boston; four are on the line from Devon to Winsted; two on the branch line running from New Haven to Northampton; four on the line from New Haven to Springfield; eight on the group of branch lines connecting Fitchburg and Lowell on the north to Fall River and New Bedford on the south; while the other 19 are widely scattered from one end of the route to the other.

In addition to these 53 stations, the New Haven has over 500 small stations, all of which serve communities and many of which serve important industries. The diversity of routes and the diffusion of traffic, with the large number of junction points, increases the number of terminal handlings necessary on this traffic.

The witness has made an actual study enabling him to state how many terminal handlings were necessary on each part of the traffic. The effect of the diversity of routes illustrated in the testimony just given is apparent in both yard and train service. With a large number of secondary lines diverging from the main line and
89 branches from secondary lines, there are made necessary numerous small yards. At these yards cars must be set off, trains re-made, and cars forwarded to destination.

Where a large amount of traffic can be handled over a line from one end to the other, solid trains can go several hundred miles without being broken up, and with the use of relatively few engine and train crews.

On a considerable portion of the traffic that is received at the gateways of Harlem River and Maybrook, this sort of operation is made possible; trains containing coal moving in some cases practically solid from the mines to the terminal point on the delivering line.

The New Haven, as other roads, believes in classifying as few times as possible; but solid trains cannot be made up to points on a branch line when the traffic on that line is not sufficient to call for a single train. This traffic, therefore, must be bunched with other traffic to make up a solid train, to be re-classified at one of the small yards mentioned, and for local trains to take this traffic in different directions to carry the cars to their respective destinations.

The analysis of the cars received at Harlem River and Maybrook shows the number of terminal handlings necessary before cars reach their final destination on the New Haven Railroad.
90 In considering this feature it should be understood that in arriving at the number of terminal handlings, no account was taken of trains broken up or re-classified. By that witness means that there are occasions where the train will run solid through to destination; but at engine terminals the cabooses and engines will be cut off and the crews and engines changed. This terminal handling is not included in the number which witness will mention.

Adjourned to Thursday, December 16, 1920, at 10 o'clock A. M.

91 Washington, D. C.,
Thursday, December 16, 1920—10 a. m.

J. E. SLATER resumed the stand and testified further as follows:

Direct examination (continued):

The analysis of cars received at Harlem River and Maybrook shows the number of terminal handlings necessary before the cars

reached their final destination on the New Haven. In considering this feature it should be understood that in arriving at the number of terminal handlings no account was taken of the handling at terminals where trains are not broken up or reclassified.

Of a total number of 53,993 cars, 1,938 or 3.6 per cent received one terminal handling; these being the few cars that are handled straight through from one gateway of the New Haven to the delivery point of the Boston & Maine or Boston & Albany.

18,281 cars or 33.9 per cent received two terminal handlings, of which 915 received a terminal handling and a local handling; the handling in a local freight train being considered the same as a final terminal handling.

The difficulty encountered by the New Haven in having frequent terminal handlings with a short haul is illustrated by the
92 fact that of the 18,281 cars receiving two terminal handlings, only 6,331 had a haul of 200 miles and 6,512 had a haul of less than 100 miles. In other words, although two terminal handlings are not excessive and may be considered the rule on most roads, yet two terminal handlings with a haul of from 50 to 150 miles result in high terminal expense in proportion to the revenue received.

Furthermore, there were 22,415 cars or 41.5 per cent which received three terminal handlings, of which number there were 17,826 which had a haul of less than 150 miles. Of the 22,415, 14,090 were handled in local trains. A considerable portion of the traffic had an even greater number of terminal handlings; 9,884 or 18.3 per cent being handled in four terminals, and 1,475 in five.

The traffic requiring one terminal handling was the bridge or overhead traffic, which, for the New Haven Railroad, constituted only 3½ per cent of the total traffic at Harlem River and Maybrook.

The larger the number of intermediate handlings in proportion to the haul, the greater is the delay. On top of that, the car must be re-loaded and unloaded. The New Haven must pay per diem while the car is being re-loaded or unloaded, although for a large part of the time the New England roads have no control over the handling of the car.

93 Practically the entire amount of traffic received by the New England roads terminated in New England, and, as an example, the New Haven road had only 7 per cent of overhead traffic. The corollary of that is that 93 per cent of the traffic received by the New Haven road from connections terminated on that line.

It is recognized that in the making of rates the costs of the original and terminal handlings must be taken into account, with a view that the ton mile rate should pay for the expense of the movement. Many years ago, when many of the previous divisions were made, the very large proportion of total expenses in terminals was not known. It can be said that roughly 33⅓ per cent of operating expenses are incident to terminal operation; this including station and yard operation and maintenance expenses. When, therefore, a road has an original or final terminal handling, together with a short road haul, there is a serious question as to whether

divisions made long ago sufficiently recompense those roads for the service rendered.

Asked whether he could say with any degree of confidence that the terminal expenses have proportionately increased substantially since these divisions were first made, the witness answered: "Yes."

94 The witness said that it is axiomatic that the greatest problem of operation today is in terminal operation, and that those roads which have the greatest amount of terminal operation in proportion to the amount of train movements are the roads which have the most serious problem.

Asked whether, in saying that during the unloading and loading of the car the New England roads have no control over it, he meant to say that the situation in New England in that regard is different from what it is anywhere else, the witness answered, "No."

The witness heard Prof. Cunningham's statement yesterday to the effect that it has been found substantially easier to effect economies in train operation than in terminal operation, and stated that that is particularly true when applied to the New Haven, in comparison with its trunk operations.

Witness understood that Prof. Cunningham did go further, and did say that the economies in terminal operation had not kept pace with the economies in road haul operation; that the increase in efficiency in terminal operation—that is, the improvements which have been made in terminal operation—have not kept pace; this being due to the extreme difficulties of so doing.

On the New England roads they have attempted to improve and have improved terminal operation by the methods which are
95 used elsewhere. Perhaps the best known example of that is in the use of hump yards. Where the New England roads have been able to put in hump yards, they have done so, and are doing so. Where there are a large number of yards at branch line and similar points, the operation does not justify the use of hump yards; and, therefore, improvements in that regard cannot be realized.

In train operation the New England roads, on account of the diffusion of their traffic, are not able in the same degree to make use of heavier power, although they have gone into that to a great extent during the past few years. On the whole, on his road, the witness has found it easier to effect economies in train operation than in terminal operation. Relatively the New Haven experience has been the same as that of other roads.

Witness has made a study of the number of loaded cars received from and the number of loaded cars delivered to the New Haven connections during this period. The terminal characteristics of the New England roads, as illustrated in the New Haven, may be indicated in numerous ways.

In the first place, the New Haven receives more loaded cars than it delivers; the figures for the year 1919 being: Loaded cars received, 779,491; loaded cars delivered, 382,487.

96 Not only does the New Haven road receive in total from all gateways more cars than it delivers, but the same fact

holds true for every individual road, with the exception of the Long Island, with which the interchange is a negligible amount.

In the case of the large connections, such as the Pennsylvania Railroad, Central Railroad of New Jersey, Erie, and Legigh & Hudson, there is a large difference between the two figures; the excess always being in the loaded cars received.

The figures that witness has shown indicating the cars delivered to New Haven connections, were not included, for the most part, in the loaded cars received from New Haven connections. The loaded cars received, for the most part, terminate on the road, and the loaded cars delivered originate there.

When asked whether he had made a study of the extent to which "your" cars were delayed for loading or unloading at terminals, and the percentage of the total that that constitutes, the witness answered, "Yes, sir." A further evidence of the terminal characteristics is in the number of the cars at the terminals, being loaded or unloaded.

The average number of cars on the New Haven and Central New England varies from 40,000 to 45,000. Of this number, some
97 11,500 to 13,000 cars are constantly being loaded or unloaded.

In other words, approximately 30 per cent. of the total cars on the system are constantly on the tracks where the traffic originates, or to which it is destined. Nothing more clearly indicates the terminal nature of the railroad than the fact that at all times almost one car in three is in the process of being loaded or unloaded.

Another indication of terminal characteristics is in the very large amount of local freight business. As stated before, the movement in New England is not consigned to a few large centers where the bulk of freight moves over certain routes, but it is distributed over the entire section.

A glance at the map showing the number of secondary lines and branches and the number of small stations along the main routes shows that a large amount of local freight service is necessary to take care of this traffic.

In the analysis of the cars moving out of Maybrook and Harlem River, it was found that 44.8 per cent had to be handled on local freight trains to their final destination. In other words, approximately one out of every two cars received from these two important connections were handled through some part of their journey on local freight trains. It is also of interest to note that about 30 per cent of these cars had a haul of less than 100 miles, indicating
98 again the double disadvantage of terminal handling and short haul.

Another very significant fact is that of the total number of trains run daily, 58.5 per cent are local freight trains. Of the total number of train miles run, more than one of every three is a local freight train mile. The necessity of this is indicated in the large number of branch lines and feeders. Some traffic is going to each one of the small stations on these lines. The traffic over each one of these lines is light, but, as indicated in the fact that practically one-half of the cars are handled on local freight trains, the total amount of the traffic so handled is very heavy.

This means that there are, of necessity, a great number of local freight trains with high costs and low earnings being operated.

On an average day, there are 369 freight trains on the New Haven road, of which 13 are fast, 140 are slow, and 216 are local. These 369 trains call for 287 crew runs, of which 12 are fast, 125 are slow, and 150 are local.

In other words, more than one-half of train crews operated on the New Haven road are in local freight train service, being paid the corresponding high rate to more men. This number of crews in excess of 50 per cent handled only 20 per cent of the car miles,
99 and only 17 per cent of the gross and net ton miles. In other words, the freight train expense in local freight trains is more than 50 per cent of the total, while the number of ton miles handled is less than 20 per cent.

Asked whether his testimony that 50 per cent of the expense was devoted to handling 17 per cent of the net ton miles might not suggest to an impartial mind the question whether the traffic is being handled to the best advantage, and whether he is prepared to testify on that point, the witness said, "Yes, sir." He said, the question is entirely a natural one, because the New England situation and the situation of the New Haven in particular is one which is, he believes, unique.

As illustrative of the character of the service and the necessities of it, witness pointed out the manner in which the local freight service is handled; first, along the main line, and then on the branch lines and feeders.

For example, between Harlem River and Boston, their principal main line, there are trains first operating between Harlem River and East Bridgeport, a distance of 51 miles, which are one-way runs and which require most of the time of eight hours, or more.

Then there are other trains running a shorter distance out
100 of Harlem River—as, for example, from Harlem River to Stamford, a distance of approximately 28 miles—which are one-way runs and which can just about be operated within the 8-hour limit; sometimes an hour or two over.

These are divided in two classes: First, the way freight runs, which, of course, as everyone knows, do the local work of loading and unloading l. c. l. freight. Second, what we call the pick-up and drop trains, which do the local work of handling solid carload lots.

Wherever it is possible to get the train over the road fast, the pick-up and drop trains are used; and where there is a sufficient amount of carload freight to justify the additional train, the additional train is handled, which brings about a speedier movement and a lower cost.

There is a second local freight run from Stamford to New Haven, a distance of 40 miles, a one-way run, which frequently takes more than eight hours.

There is a further run between New Haven and Midway, a distance of 53 miles, one way; between Midway and Providence, a distance of 57 miles, and between Providence and Boston, a distance of 44 miles.

These runs are all one-way runs, and it will be noticed that the highest mileage in any case is 57 miles, showing that we only get one-half of the mileage which we ought to get, and that on
101 top of this we frequently find it necessary to do overtime on these trains, on account of the very heavy amount of business which they are handling.

For example, on the way freight run between Harlem River and Stamford, 28 miles, there are 20 stations to be served. On the run from Harlem River to East Bridgeport, which is the pick-up and drop train mentioned before, there are 37 stations in the 51 miles; between New Haven and Midway, 21 stations in 53 miles; between Providence and Boston, 27 stations in 44 miles. That is an indication of the service on the main line.

Asked how many trains a day they ran between those different terminals which the witness mentioned, he answered: "One each way."

Witness said if they took off any of these trains, the people would be without that service entirely.

Witness stated that the way trains which handle principally the less than carload traffic are substantially more expensive than the pick-up and drop service trains.

Asked why they could not run a part of their way cars in the through trains, and part in the pick-up and drop trains, and thus save some of the expense, the witness said: "That could be done, but the result of such a policy would be that the through trains would thus become locals."

102 Witness said they have such a large amount of this business which must be picked up and dropped at the local points that if the through trains—for example, if the through trains from Harlem River to New Haven and Midway handled the local carload business between those points, it would be impossible for them to make these long runs within any close degree of the time limit. They would have to pay the through crews the local rate. The cars which are handled in the local trains would be delayed, and the local traffic would not be materially speeded up.

Witness does not see how the number of trains run in that local service can be considered as excessive.

The branch line local service is a particularly serious problem, on account of the fact that in many cases the length of the run is determined by the length of the branch.

The best illustration of that is the runs from Boston down on to Cape Cod. There we have our longest freight run, from Boston to Providencetown, 120 miles, and from Boston to Hyannis. Those are, of course, one-way runs, and frequently the per diem runs into very high figures. On the particular test that was made, the Boston to Provincetown train consumed 11 hours and 35 minutes of crew time, and the Boston to Hyannis train consumed 9 hours and 55 minutes. Those trains are handled across from the Boston terminal to Cape Cod points. The local service between Boston and
103 about half way—Buzzard's Bay—is handled in other trains, and these particular trains handle the local traffic on Cape

Cod. It is necessary to run the trains all the way from Boston on account of providing those towns with the quickest service possible between Boston and those points.

Another example of this thought is the handling of trains up what is called the Norwich Branch, running from Midway to Worcester. This is a difference of 73 miles. There is, first, the turn-around run from Midway to Norwich and return; the total mileage being 32 miles; the total hours on the road on this particular day being slightly under eight.

From Norwich to Putnam there is a one-way run of 32 miles; on this particular day the time being 9 hours and 30 minutes. From Putnam to Worcester there is a run of 35 miles, one way; and on this particular day the run was made in slightly less than 8 hours.

In other words, in the 73 or 74 miles three local trains were necessary, all of which took eight hours or more, or slightly less, as the case may be.

Another example of this class of service is the local service out of Providence. There is a large number of branches which
104 spread out from Providence, many of which are practically dead-end routes.

From Providence to Washington there is a turn-around job of 28 miles; Providence to Hope, a turn-around of 30 miles; Providence to Worcester a one-way run of 42 miles; Providence to Bird's Mills, a turn-around job of 54 miles, and so on.

Witness is prepared to say that there are a very substantial number of instances where that kind of service is performed. Ordinarily they run on these branch lines but one local train a day in each direction. On almost all of these branch lines they have substantial manufacturing industries.

Asked if they did economize in the operation of these trains by running a smaller number, it would mean that on certain days the industries along the lines would have no service, the witness answered "Yes, sir."

The witness said that the question why they could not cut down that overtime on these trains was a very delicate question which is constantly receiving the attention of the operating officers. With a large number of stations, it is natural that the division officers, train masters, superintendents and road corps are spending a great deal of time in following these local feight trains. Wherever it is possible, a run which has formerly been a one-way run, will be
105 made a turn-around run; or, where there have been two turn-around runs covering a certain distance, they will attempt to handle it in one run each day in shorter time than the two turn-around runs consumed. It is a point which must be constantly watched in order to ascertain just when it will be possible to eliminate a train and a crew. It is possible sometimes to split a run in two and thus avoid overtime, but very often, whereas the overtime might have amounted to 30 or more per cent, by splitting it in two you simply double it. Such doubling will amount to more than the overtime at time and a half.

The witness is in constant daily touch with that situation. Efforts

are being made almost daily to control that situation and effect economies in the service. For example, the local freight runs during the ordinary fluctuations of traffic are practically a fixed quantity. They can reduce expenses by reducing the runs, but they, therefore, correspondingly reduce the service.

Asked whether a slight dropping off of the quantity of local business does not ordinarily justify the taking off of the train or in substantially reducing the expense, witness answered, "No" to both questions.

Asked whether, where there is a substantial falling off in the traffic, it is possible to save some of that expense, and if it
106 had not recently been done, witness answered "Yes, sir."

At the present time, where the amount of business has seriously dropped off, the runs which were formerly run every day are run every other day. That amounts to depriving their local passengers of train service on alternate days. There is a reduction of expense also, but, so far as the question of economy is concerned, it is not what would be called an economy.

Asked whether he was sufficiently in touch with this situation to be able to state definitely whether or not a substantial saving in the handling of these local trains can now, in his judgment, be effected, the witness answered:

"I believe that it can not. The amount of service is practically at a minimum; and I do not believe that can be done, provided that proper service is going to be furnished the numerous industries scattered all over the railroads."

The so-called slow trains perform local work to a considerable extent—to the extent that local work would be considered stopping at numerous intermediate stations.

In addition to the freight trains which may be considered as purely locals, picking up and dropping cars at local stations,
107 or doing way freight work, there are a large number of freight trains classed as slow which do a certain amount of intermediate local work. Of the total number of 369 trains, including all classes, only 71 or 19.2 per cent, ran intact from the originating point of the train to its destination. These 369 trains handled out of the originating terminals 9,045 cars, and picked up or dropped en route 6,293 cars, or more than 66 per cent of the original number.

The witness says that he might add to what he has stated in connection with the work of the slow trains, by giving an example. In trains running from Harlem River to New Haven there will be a certain number of cars which they wish to go to Bridgeport in order to speed up the movement of those cars. There will not be a sufficient number to justify running an additional train to Bridgeport. Therefore, the Bridgeport cars are placed with the New Haven cars. When the train gets to Bridgeport it will drop off a number of the cars, perhaps pick up an additional number of cars, and go on to New Haven. This means that the amount of additional time con-

sumed by the through train is very much increased, but it is made necessary on account of the nature of the service.

Asked whether he was prepared to discuss the terminal
108 cost at their terminals where the terminal service is performed, the witness answered:

"In addition to the 50 per cent of freight train expense engaged in local freight work and handling cars to their final destination, a very large proportion of yard switching is in placing cars for unloading or pulling them from bulk tracks or private sidings after being loaded. There are over 3,000 companies which receive sidetrack delivery, or about three to every two miles of road. Approximately one-half of all the yard switching locomotive hours are spent in this work, and were there not such a large number of intermediate yards made necessary by the physical characteristics of the road, this percentage would be very much higher. In addition, therefore, to the 50 per cent of freight train expense for freight terminal work, 50 per cent of yard expense is in the placing of cars at their final destination."

Witness has classified the month's traffic previously referred to, on the basis of the length of haul performed by his road on the various cars. There has been much emphasis on the terminal characteristics of the New England roads, and a considerable amount of detail has been furnished for the New Haven as illustrating the New England condition. It has been pointed out that, al-
109 though on all railroads there are a large number of cars which originate and terminate, there is also a large number which have a through movement. Moreover, on the trunk lines, for the most part, those cars which do originate or terminate have a fairly long haul, with the resulting revenue, before the car reaches the gateway to the next road. Such is not the case on the New England roads. The average haul is shown to be approximately 100 miles. If the local service is excluded, this figure is increased materially, but excluding the same business on trunk lines, the discrepancy between the two is made more significant. Considering the interchange business alone on the New Haven for the month's business which has been discussed previously, it was shown that about 26 per cent of the cars have a haul of less than 100 miles; 50 per cent a haul of less than 150 miles; and on the other hand, only 30 per cent had a haul of 200 miles, and only 10 per cent a haul of 250 miles.

Witness has made a study of this interchange traffic, studying each of the cars received during a given day, with a view to determining how their average length of haul on this traffic compares with the average length of haul enjoyed by their connecting lines and by other lines participating in this traffic.

A one day's study was made, covering May 26, 1920, show-
110 ing the average haul on traffic originating or terminating on trunk lines, in C. F. A. territory, and back on all railroads *and* originating and terminating in New England.

An analysis of the traffic originating on various lines west of the Hudson River and terminating on the New Haven, or vice versa, furnishes other pertinent information of this character.

Practically all of the lines west of New England were embraced in that study. I would not happen that on that particular day every railroad in the United States participated in this tonnage, but all the important roads with which they interchange any appreciable amount of business would.

On all the lines which had any appreciable amount at all of traffic originating on their lines and terminating on the New Haven, the Central of New Jersey, the Delaware, Lackawanna & Western, the Lehigh & New England, and the New York, Ontario & Western, had a shorter haul for this particular traffic than did the New Haven. With the exception of those four railroads, all of the lines west of New England enjoy a longer route than that which the New Haven enjoys.

On the Atchison, Topeka & Santa Fe, 1,698 miles was the average haul; on the same traffic on the New Haven, 112 miles.

111 On the Atlantic Coast Line, 553 miles; the New Haven, 145 miles.

Baltimore & Ohio, 257 miles; New Haven, 163 miles.
Canadian Government railroads, 230 miles; New Haven, 74 miles.
Canadian Northern, 439 miles; New Haven, 121 miles.
Canadian Pacific, 488; New Haven, 56.
Chesapeake & Ohio, 306; New Haven, 152.
Chicago, Burlington & Quincy, 616; New Haven, 133.
Chicago, Milwaukee & St. Paul, 946; New Haven, 87.
Delaware & Hudson, 118; New Haven, 92.
Erie, 390; New Haven, 174.
Great Northern, 1,464; New Haven, 183.
Illinois Central, 449; New Haven, 97.
Lehigh Valley, 182; New Haven, 120.
New York Central, 343; New Haven, 90.
New York, Chicago & St. Louis, 289; New Haven, 162.

In almost every one of those instances the haul performed by the New Haven was very much smaller than the haul performed by the lines west. This refers to the traffic originating on those lines and terminating on the New Haven, and not, therefore, taking into account the instances in which any of the lines west may have been bridge carriers on this traffic.

112 Witness has made a like study with a view to determining how the relative hauls compare if they take into consideration the instances where the lines west performed the bridge service on this traffic.

Some of these figures are: The Atchison, Topeka & Santa Fe, 1,180; Baltimore & Ohio, 346; Delaware & Hudson, 142; Delaware, Lackawanna & Western, 324; Lehigh Valley, 297; New York Central, 516; New York, Chicago & St. Louis, 281; Pennsylvania Railroad, 284; Wabash, 206.

Witness might give others, but those are examples which are safe to use as a symbol of what they all are.

Witness thinks it is clear from this and from any study which can be made that on the bulk of the traffic the New Haven road receives a very much shorter haul than do its immediate connections and other roads on which the traffic may originate.

The advantage of the western lines is substantially increased when they take into account the bridge service that they perform.

Witness has made a study of the separation of freight and passenger expenses for the New England railroads for the first six months of 1920, this study conforming to the formula of the Interstate Commerce Commission, effective January 1st. The six months' figures are on the New England lines, as on practically all lines,
113 rather unfortunate, on account of the conditions existing during those six months. The New England lines, as were other lines, were seriously affected by the severe winter, and they were about getting on their feet when they were confronted with a marine strike, and soon afterwards with a strike which spread to practically all the important yards on the west end of the railroad.

These figures are given, not so much to show the actual operating ratios of the freight and passenger business in normal times, but rather to show the relative profitableness or remunerativeness of the two classes of traffic in New England.

The operating ratio for this period for the Bangor & Aroostook in freight service was 88; in passenger service, 105. The Maine Central, 106 in freight service; 103 in passenger service.

The Central Vermont, 115 in freight service; 151 in passenger service.

The Boston & Maine, 109 in freight service; 101 in passenger service.

The New Haven, 111 in freight service; 84 in passenger service.

The Central New England, 109 in freight service, and 340 in passenger service.

114 The Rutland, 114 in freight, and 111 in passenger.

The Bangor & Aroostook, the Central Vermont, and the Central New England, are all very small passenger-carrying lines,—relatively small passenger-carrying lines, especially the Central New England. The operating ratio in the case of the Central New England is, obviously, almost ridiculous. Witness might say that the amount of passenger service there is practically fixed; it being just the bare minimum of the local service, and that the amount is very small; the total revenue only amounting to around $30,000 a month.

The witness attributes this to the very light traffic on that road. The principal passenger-carrying roads in New England are the Boston & Maine, the New Haven, and the Maine Central. These roads all show for the freight service a higher operating ratio than for the passenger service.

Asked whether these figures were introduced to show that the passenger service is now highly profitable, the witness said:

"They are to show that proportionately the freight service is less remunerative than the passenger service."

Asked whether these figures tend to show that neither class of service is paying as much as it ought to pay, the witness said:

115 "Especially in this period; yes, sir. They are introduced because there seems to have been a great deal of surprise on the part of some of the trunk line executives that the passenger service was more remunerative than the freight. But I might say that there have been numerous studies made, not only on the basis which the Interstate Commerce Commission has prescribed, the present basis, the former basis, but other studies have been made independently, and in each the common expenses have been distributed in numerous ways. So far as the New Haven is concerned, the result has always been the same."

The question being put: "Mr. Slater, we ought to make it plain that these figures do not show the present situation; in other words, that they fail wholly to take into account the increased rates and fares approved by the Commission in Ex Parte 74," the witness said: "I might say, in that case, that the operating ratios for the months of October and September, when those were in effect, show the same result, although, of course, the difference is not quite as marked." The operating ratio for October in freight service was 97, and in passenger service 84. In September the operating ratio in freight service was 96, and in passenger 80, these figures being those
116 on the New Haven road. Witness has not the information for the other roads.

Witness wishes to point out that the operating ratio in freight service is shown to be higher than in passenger service; that the freight service has been shown to be less remunerative; that 67 per cent. of the tonnage and approximately 80 per cent. of the ton miles operated by the New Haven road are on traffic which is interchanged with trunk lines.

It is, therefore, a fair statement to make that, if all of the traffic is unremunerative, 80 per cent. of the traffic is unremunerative.

Furthermore, when it is considered that the local rates are three or four times more on a ton-mile basis than are the through rates, that the local situation has been canvassed within the last three years, and that the through situation has not been canvassed in many years, I think the inference is clear and the statement fair that the interchange business is less remunerative.

Asked whether he has said that the local rates are three or four times as high as the through rate, the witness answered: "The ton mile revenue in local service."

Asked whether he was talking about the comparison of the local rates with the portion of the through rates received by the
117 New England roads, or about the through rates as a whole, the witness answered: "The proportion received by the New England roads."

Cross-examination:

Witness does not mean to say that the local rate from Harlem River to Boston is three or four times greater than the division of the New Haven from Harlem River to Boston.

The basis of that statement was the total of their local service—total ton miles of service local to the New Haven, and the total revenue of the New Haven. When one is divided by the other, the rate is approximately four times the ton mile rate of all service. It is simply the local service in bulk and the through service in bulk, without regard to the length of the haul involved.

Asked whether, if the length of haul were considered, he would attribute some weight to that comparison, the witness answered: "I would attribute some weight to it; yes, sir. I simply gave that as definite information. I think that will be developed further by the traffic witnesses."

The witness' testimony, except with regard to that statement of the interchange of tonnage between the lines and the operating ratios, is confined to the New Haven road, and his connection is exclusively with that road.

118 He has been with the New Haven for six or seven years, and prior to that with the Union Pacific. He has had no experience with the trunk lines in this territory.

Asked whether what he had stated with regard to change in conditions since these divisions were made represented anything that had come under his personal observation, the witness said: "Not extending over the entire period; no, sir. That is a matter, I think, of common knowledge."

In referring to certain comparisons of station costs, yard costs, etc., witness was using Prof. Cunningham's figures, and did not introduce anything additional. They were direct copies from his exhibits.

Witness attributed, as Prof. Cunningham did, the difficulties of the New Haven in some respects to the low traffic density; by which he means the carriage of relatively a smaller amount of business by a particular railroad over the road involved.

During the past year or so the New Haven has had all the traffic it could handle, as a railroad.

During the past year, and before that, the New Haven has imposed a great number of embargoes.

Asked whether he meant to intimate that he thought the New Haven would be better off with more traffic than it has, the witness answered: "Yes, sir."

119 Asked whether he said this in spite of the fact that the New Haven has not been able to handle what was offered to it, the witness said:

"You must remember, sir, that the amount of traffic density spreads over an entire territory. A road might have 'the neck of the bottle;' it might have certain centers where, if it congested the entire operation on the road, it would be thereby held up and stopped. It might have certain destinations of traffic which, if they were con-

gested, would take the traffic up to the gateway and thus prevent handling traffic on other parts of the road which could easily handle it."

Asked on what part of the road was this excessive density of traffic that resulted in the inability of the road to handle it, the witness said:

"It was not the density of the traffic over the road as a whole, sir. It was the congestion at terminals and the very large amount of traffic going to particular points that made that true. That naturally is true all along the line from New York to Boston and certain centers—Waterbury, Hartford and Springfield—occasionally Worcester—and all of these points which are, themselves, well scattered over the railroad."

Witness has not any figures to show the returns to the New
120 Haven with respect to the different portions of its road, by divisions.

These conditions which resulted in embargoes were primarily on the main line between New York and Boston, and these other conditions that he mentioned,—such as those in the Naugatuck Valley, Worcester, and other points which he mentioned—Fall River and New Bedford, which are on branch lines, also caused traffic to back up.

They have just started on the separation of expenses. They have no separation of revenues.

Witness has been special assistant to the General Manager for about a year and a half.

When there is actual congestion the cost of operation is increased. Witness might point out that in times of embargo, the traffic is controlled; so that it runs reasonably freely. That is, instead of having it continue to come on their road, they place an embargo and stop it, and, therefore, allow the traffic they do have to run freely. They did have the difficulties of congestion this year on account of the snowstorms and the strikes, which the witness thinks existed west of the river.

During the year 1919 there were practically no embargoes at any time. The year ended June 30th included these unusual difficulties which the witness has described, and they materially en-
121 hanced the cost of operation, as compared with normal times.

Taking the 30 principal points of origin and destination of traffic in New England, the witness is not able to say, offhand, what proportion of their traffic originates and terminates there, but it is a considerable portion. They have statistics of a general character of the traffic originating and terminating at the larger centers. Witness spoke of 53 stations that handled approximately 70 per cent. of the traffic. He wishes to point out, further, that those 53 stations are scattered all over the line. The traffic as to those 53 stations is diffused in the same manner as the traffic in general. Furthermore, as to the balance of the 500 stations, all of which handle a large amount of traffic in total, it is so diffused that that is where they have a light density of traffic that confronts them in their situation.

16 of these 53 stations are located on the road between Harlem River and Boston, and three or four on the line to Springfield.

Witness' figure of the 7 per cent. overhead traffic on the New Haven is based on a study of the total traffic of six alternate months. He characterizes as "bridge traffic" traffic received at the New Haven gateways and which was delivered to the Boston & Maine or
122 Boston & Albany, or vice versa. There is traffic received at Harlem River and the other gateways, and delivered to the Boston & Maine or Boston & Albany.

Witness characterizes as "bridge traffic" traffic received by the New Haven and delivered to some connection, or traffic received from some connection and delivered to the Central New England.

Witness does not have, but presumes that the working papers that show the basis of his statement of the percentage are available.

The two gateways referred to in witness' study of the 54,000 cars are the only gateways at which the New Haven receives traffic from its trunk line connections. They receive traffic from the Boston & Albany to Pittsfield and Springfield and Westfield and Worcester.

That traffic was not included in the study, although it could be. Witness does not know offhand whether they had that information or not. It was figured at the time and the results were identical with the others.

This study was made because the New Haven was contemplating the construction of new yards at Cedar Hill and Providence and wished to know how the traffic moved from the originating points on the New Haven to the points of destination, in order that they
123 could take into the new New Haven yard all the traffic possible and send it from there to the farthest points on the line. This study was made in order to find out what those points were and to ascertain how the traffic could be handled. In other words, with a view to considering and determining what changes in their facilities would enable them to handle it more economically.

Witness intended to imply that those 54,000 cars were properly classified at the originating gateway. Some cars were there at once put into Boston trains. With regard to station costs, witness referred to some 560 or 570 stations on the New Haven. As he recalls it, the non-agency stations were not included in that figure. There are very few non-agency stations.

Witness is not absolutely positive of this, but will confirm it. Witness does not know at how many places, say of 500 inhabitants, or less, they maintain an agency. Witness has no data as to the station costs at the larger points, like Boston, Worcester, Springfield, etc., as compared with the station costs at these small points of origin and destination. They have the usual costs at the larger stations.

Asked whether it is true that that increase in station costs is largely at the larger centers—the big cities—as compared with the
124 small towns, the witness said: "On a percentage basis, sir, it would be the opposite." And being further asked: "That is on the cost of handling the traffic per ton," the witness said: "I would not want to go along with that statement, on account of the

fact that the wages at small stations by the standardization are so much increased."

Witness has no figures which would throw light on that question, but understood he was asked for his opinion.

Witness has no information as to how much demurrage his line has collected in any particular period from the shippers, but it is easily available and can be furnished.

In his testimony in regard to terminal handlings of cars, the witness used the term "terminal handlings" as including intermediate junction handlings as well as final handlings.

Witness has no knowledge as to comparative conditions on other roads in respect to the proportion of tonnage cars on the line, that is, currently at the terminals.

The average day which was the basis of his study of the distribution of the tonnage as between trains, and so forth, was selected when they were working up information for other purposes, and was taken in the first part of December last year. The day was December 11th.

It was a day when the business was not exceptionally heavy
125 or exceptionally light, and when it was not exceptionally cold or exceptionally hot.

Asked whether, with regard to the companies that have sidings, any of those operations are difficult and complicated handling operations, and whether he had the facts to show the percentage of that character as contrasted with those that are simple operations, the witness said: "No, I have not, sir. I think our conditions there are a good deal the same as other roads. Where you have to go through a public street, for instance, you always have difficult operations, where it is expensive to handle. I do not say that our situation is worse in that respect than that of other roads."

In his study to ascertain the relative length of movement east and west of the gateways, on May 26, 1920, the witness took practically all the roads where the tonnage amounted to 100 tons or more on that day, and excluded practically everything below 100 tons.

Witness did not give any figures for the tonnage originating on the Pennsylvania and delivered to the New Haven, but has those figures. There were two or three others on which he had the information. The Pennsylvania Railroad figure was 241, as compared with 157 on the New Haven.

The statement from which witness testified included a showing with respect to the revenues as well as the length
126 of haul.

Referring to a question with reference to the congested condition in the six months of 1920, the witness testified that he assumed that counsel was going to use that in connection with the constructive year ending June 30, 1920, which was introduced by Mr. Brigham. Witness wanted to state in that connection that the factors of snows, storms, strikes, etc., were taken into account and eliminated before that statement was made up.

Asked whether he still stated that the conditions were abnormal, and resulted in abnormal expense, the witness said, "I do, absolutely, for the New Haven Road. The New Haven was harder hit than the others—very much harder."

The New England lines, other than the New Haven, were almost unaffected by the switchmen's strike.

Redirect examination:

In witness' statement of the movement of the 36,000 cars of traffic from the gateways where he took only two gateways, he took all the gateways that there were with New Haven connections west of the River, omitting the New England junction points, such as Fitchburg, and others, where they connected with the Boston & Albany and other roads.

127 The New Haven obtains a very much shorter haul out of Fitchburg than out of the Harlem River. The traffic out of Harlem River and Maybrook provides the longest haul practically that they can get. If they had included the other junction points it would have shown their disadvantage to be substantially greater than was shown.

The only overhead traffic there could be on the Boston & Albany and Boston & Maine points would be to Harlem River and Maybrook, and therefore there would be that same result reflected in the eastbound movement.

Recross-examination:

The cars received from the Boston & Albany are subject to the same number of movements through the terminal junctions, as witness calls them, terminal handlings. For example, they receive cars at the State Line. That car will be handled, probably, from State Line to Bridgeport. That would be two terminal handlings. The car would then, if it was going to Boston, probably move from Bridgeport to Midway. That would be three terminals. If it went further into Boston, that would make four; or if it went into Proctor, or that territory, it would be greater.

Asked whether they would not get a car for Boston from the Boston & Albany, at State Line, the witness answered: "No."

128 MORRIS MCDONALD, called as a witness on behalf of the complainants, testified:

That he is President of the Maine Central Railroad, and has held that office since July, 1913. Prior to that he was Vice-President and General Manager, from 1897 to 1913. Previous to that he was secretary to the Vice-President and General Manager. During that time he also had the Boston & Maine, between the period from July, 1913, to September, 1914. Previous to that he was connected with the Central of Georgia, down at Savannah, about 14 or 15 months, in the transportation department of the Savannah Division. Previous to that he was connected with the Louisville, Evansville & St. Louis, now a part of the Southern, operating between Louisville, St. Louis and Evansville, from 1885 to 1892. He was in various positions through the auditing department, transportation department, and finally transportation manager.

Asked whether he had prepared a statement, witness produced a document which was received as Complainant's Exhibit No. 30, Witness McDonald, part of which was read into the record as follows:

"The Witness (reading): 'The Maine Central Railroad, which has heretofore been regarded as one of the stronger New England railroads, finds itself emerging from Federal control with its
129 credit seriously impaired, its revenues inadequate, and its net earnings so low that it is constrained, for the first time since 1883, to withhold dividends from its stockholders.

" 'The Maine Central Railroad is not a speculative enterprise. Nearly 100% of the holders of preferred stock, and nearly 80% of the holders of common stock are residents of the State of Maine. The Company has tried to be both efficient and conservative in its management, yet, through the operation of forces wholly beyond its control, and more largely in the control of the Government, it finds itself in a condition that causes the most serious concern to its management and to its stockholders.

" 'Our standard return was $2,894,845.67. For the first six months of 1920 our deficit was $1,226,000.

" 'Our present predicament is due mainly to the following considerations:

" '1. Our operating expenses per mile of road are nearly three times as great as during the test period: Increases in rates have fallen short of meeting these additional expenses.

" '2. Since 1916 our cost of fuel consumed by locomotives has increased from $3.60 to $10.35 per net ton, which, on the basis of our consumption of 432,000 tons yearly adds $2,916,000 to
130 our annual expenses.

" '3. Every time we are accorded an increase in rates the State of Maine takes from us a substantial part of it in the form of a tax on gross transportation receipts. Out of the increased revenues accorded to us since 1918 we estimate that over $1,121,000 annually must be turned over to the State of Maine in taxes, an increase of 75% over the 1918 basis.

" '4. Our increases in wages since the year 1917 have amounted to about $9,000,000 per annum.

" 'We submit that every one of the above factors is attributable to causes wholly beyond our control, and more largely in the control of the Government, and we feel justified in appealing to the Government for relief.

" 'General Survey of Territory.

" 'Our Railroad has developed slowly, largely through the process of merger and lease of existing railroads, such roads having been constructed from time to time to meet the requirements of the various localities in this territory. At the present time, these roads are

welded into one system of 1,216 miles, no considerable additional mileage having been constructed for some years. The recent development of the system has been by increasing its existing facilities. It will be readily apparent that we are not now in a
131 financial condition to increase our facilities.

"'There are portions of our railroad which should have enlarged trackage and terminal facilities, in order to provide for the more economical operation of the property, and there is also need of funds for the purchase of additional equipment.

"'Passenger Traffic.

"'The passenger traffic of this Company for the calendar year 1919, including mail and express, amounted to $5,641,853, equivalent to 32% of the total operating revenues. The present rate basis is 3.6 cents per mile on the main line and principal branches, a somewhat higher basis being used on a few of our branches in light traffic territory. The business consists of regular commercial and family traffic which extends throughout the entire year in reasonable volume, and also of a large summer and autumn tourist traffic for such shore resorts as Bar Harbor, Rockland Breakwater, Boothbay Harbor, and such inland resorts as Moosehead Lake, the Rangeley Region, Poland Springs, Belgrade Lakes and the White Mountains.

"'Freight Traffic.

"'The freight revenue of this Company for the calendar year 1919, amounted to $11,286,883, equivalent to 64% of the total operating revenues. The freight traffic handled during 1919,
132 amounted to 8,069,033 tons. Among the principal commodities were pulpwood, 1,339,856 tons; lumber, 1,087,077 tons; coal 916,518 tons; potatoes 624,086 tons; grain, 284,414 tons; hay, 114,567 tons; fruits and vegetables, 111,257 tons. The principal manufactured articles handled were wood pulp and paper, 1,089,333 tons. There was also a considerable tonnage of such commodities as canned fish, boots and shoes, textiles, cement, lime, livestock, and mill supplies.

"'The territory which we serve is rather sparsely settled and lacking in density of traffic. Nearly all of our products find markets outside of our territory and are in competition with sources of production much nearer to the common markets, a condition which places our shippers at some disadvantage.

"'The tonnage of freight transported for the calendar year 1920 will undoubtedly be in excess of that for 1919, but by reason of existing commercial and industrial conditions it is believed that the tonnage for 1921 will not be as great as for 1920.

"'Lighter Traffic Density.

"'We serve a region where both the freight and passenger traffic density is very much lighter than in southern New England. For

example, our revenue ton miles per mile of road, year 1919,
133 were 737,280 as compared with 1,586,451 for the New York, New Haven & Hartford, and our revenue passenger miles per mile of road were 140,292, as compared with 1,063,678 for the New York, New Haven & Hartford.

" 'Our territory, although rather sparsely settled, is well wooded and watered and the soil well adapted to agricultural development. Although the winters are long and severe the climate is healthful. The area of Maine and that part of northern New Hampshire and Vermont which we traverse is greater than the entire balance of New England and if properly developed by additional railroad mileage, the utilization of its water power, hard wood and other forest products, in addition to the fuller use of the land for farming purposes, it can easily be made to support a population many times greater than at present.

" 'Operating Revenues.

" 'During the period on which the standard return was based, our operating revenues per mile of road were a little in excess of $10,000 per annum, and while this has been increased to the basis of about $20,000 per mile at the present time, such increase will not be sufficient to enable the Company to pay its operating expenses, taxes, fixed charges and dividends, as was the case during the test
134 period and for many years prior thereto.

" 'Operating Expenses.

" 'Our operating expenses during the test period were $7,100 per mile of road per annum, while on the present basis they are about $19,000 per mile of road per annum. This very great increase in operating expenses has been brought about by conditions beyond the control of the Company. While some decreases can be made in operating expenses to partially offset probable decreases in volume of traffic for 1921, it is almost certain that the anticipated decreases in traffic can not be wholly offset by decreased operating expenses.

" 'Fuel Supply.

" 'Our supply of locomotive coal is now secured under yearly contracts and covers movement of coal from the mines through the tidewater ports of Port Richmond and Curtis Bay, thence by water to Portland, Maine, from which port the coal is distributed over the system to points where required for consumption.

" 'Our coal under present contracts delivered alongside Portland costs $9.95 per net ton, to which should be added the cost of discharging and handling. This price is somewhat lower than we have paid for coal during the summer of 1920 when we were
135 obliged to go into the market and buy spot coal in order to secure the necessary supply for our current needs.

" 'The consumption of locomotive coal is approximately 432,000 tons per year, and our annual fuel costs have increased $2,916,000 since 1916.

" 'Taxes.

" 'Attention is called to the annexed statement of taxes for a series of years, this being one of the important items of our expenditures. Under the law of Maine we pay an annual excise tax based on gross transportation receipts earned in the State for the preceding year. This results in a very substantial increase in this tax under present conditions. For example, the Maine excise tax paid in the year 1918, based on the gross earnings for the previous calendar year, was $636,861.55. On the basis of year ending June 30, 1920, adjusted to present freight and passenger rates, it is estimated that the amount of the Maine excise tax would be $1,121,517, or an increase of $485,000 equivalent to an increase of about 75% with very little change in the volume of traffic handled in these two years.

" 'It is a very serious matter for us to have the State take from us such a large part of the additional revenue which the Federal
136 Government granted us for our own needs. Relief afforded with one hand is partly withdrawn with the other. The Maine excise tax amounts to over 60 cents a ton on all our interchange business with the lines West. Stated another way, an arbitrary of 60 cents a ton on this interchange business would not yield us enough to pay the excise tax. The increase in taxes as above shown is equivalent to nearly 50% of the total interest on our funded debt.

" 'Financial Results.

" 'Attention is called to figures shown in the comparative statistical statement filed herewith. This statement among other things shows that while the net revenue from railway operations per mile of road operated was an average of $2,988.30 per annum for test period ending June 30, 1917, and $2,834.61 for the calendar year 1917, the increased cost of operations has been so marked without corresponding increases in operating revenue that for the year ending June 30, 1920, there was a deficit in net revenue from railway operation per mile of road operated of $248.31 without anything earned for payment of taxes, fixed charges or dividends. We feel justified in asking, not only that the deficit be wiped out, but that we be permitted to earn a fair return on the fair value of our property.

" 'Additional Revenue Required.

137 " 'The property investment account of the Maine Central Railroad Company and leased lines October 21, 1920, was $61,972,410; six per cent, return upon this investment, would be $3,718,345.

" 'The standard return basis of net railway operating income was

$2,894,845.67 which was equivalent to 5.02% on property investment as of June 30, 1917, namely, $57,714,170.

" 'Contrasted with the Standard Return which is the average for years ended June 30, 1915, 1916 and 1917, the corresponding net railway operating income, Federal and Corporate, combined, for

" 'Calender year 1918 was	Deficit..	$695,548
" 'Calendar year 1919	Deficit..	1,497,741
" 'Six months of 1920	Deficit..	1,226,088

" 'Net railway operating income on Standard Return basis as estimated for one year, taking into account present basis of revenues and expenses, is a deficit of $105,456. On this basis an additional revenue of $3,823,801 is required to earn 6% on present property investment. Whereas in former years we earned $3,000 per mile for return on our investment, we now have about $1,200 which is not sufficient to pay our fixed charges.

" 'Dividends on Capital Stock.

138 " 'The Maine Central Railroad has had an unbroken record of payment of dividends on its capital stock since February 15, 1882, the average amount per annum being somewhat in excess of 6% on its common stock for the entire period, but until such time as we can secure a further adjustment of operating revenues and expenses, no further dividends can be paid, although our capitalization is conservative, and it is believed, considerably less than the actual valuation of the property devoted to the service of transportation.

" 'Stock Ownership.

" 'The common and preferred stock of the Maine Central Railroad is largely distributed through the territory served by the Company, and other parts of New England, and is held by families, estates and banks for permanent investment. On December 31, 1919, of the 2,182 holders of common stock, all but 136 resided in New England. Of the 536 holders of preferred stock, all but 17 resided in New England.

" 'General Policy.

" 'It has been the general policy of the Company for many years to build up its facilities and service on a scale sufficient to meet the necessities of its traffic. Its revenues should be sufficient to pay its taxes, fixed charges and reasonable dividends upon its capital stock on the same basis as heretofore, viz, 5% on its Preferred
139 Stock and 6% on its Common Stock, annually.

" 'In addition to the foregoing there should be a moderate amount earned and expended to take care of a reasonable share of any improvements to the property, including new equipment.

" 'This has been the policy of the Company in the past and has resulted, down to the period of Federal control, in a moderate capitalization, regular returns to stockholders and good financial credit, all of which has enabled us to render service satisfactory to the traveling and shipping public at reasonable rates. It is the desire of the management as soon as may be to re-establish these conditions.

" 'Conclusion.

" 'The Maine Central Railroad, reaching as it does, all important points of 300 miles of the Atlantic Coast Line, from Portland, Maine, to Eastport and Calais, Maine, and extending through nearly every county in the State, as well as parts of northern New Hampshire, and Canada, is a vital necessity to the commercial interests of this section of New England.

" 'In view of the very great increase in expense of handling freight traffic caused by standardization and advance in wages,
140 higher costs of fuel and other supplies, we must find ways and means to maintain our credit by increased revenue.

" 'The above facts set forth briefly the causes for our concern. We do not ask for special consideration in this case, but we do most earnestly insist that the Commission, in determining the merit of the position taken by the New England lines as a whole, do not overlook the fact that the one large railroad system in this territory with an unbrokn record of financial strength, now finds itself in a position of financial danger. We ask that the Commission inquire with care into the causes of our predicament, and afford such relief as is demanded by our past record and by the reasonable needs of the public we serve.' "

The information furnished the witness is that until the Maine Central was obliged to defer declaration of dividends a month ago, it had paid the dividends for 32 years. His own knowledge covers 24 years.

The action taken a month ago was to defer for the first time in the history of the road the payment of dividends, on both preferred and common. For the year ended June 30, 1910, the Maine Central's average cost for coal on tenders was $3.35. It held a fairly regular figure until December, 1917, when it went to $5.59; then changed to $7.47 in 1918; $7.44 in 1919; and $10.77 esti-
141 mated for the adjusted year; $11.02 for the year ending June 30, 1920; and, on the basis of December 1, 1920, prices, $10.35.

With respect to cross-ties, that has changed, as shown by the table, from June 30, 1910, from approximately 46 cents, up to $1.12, and witness was afraid this year it will be on the basis of $1.50, or very nearly so. They have had some difficulty in buying suitable ties in their own territory. The witness rather thinks they have in hand at the present time something that will bring them a regular supply for the next two or three years.

Witness wishes to call attention to the adjusted year, using June

30, 1920, figures, to show how serious the situation is for them, not being able to earn their fixed charges. The June 30th figures are adjusted with the increase in revenue as well as the increase in expenses.

Cross-examination:

The cost of coal in witness' exhibit is the cost of coal on locomotives. They went into the market in the months of June and July and paid very handsome prices for coal, in some cases as high as $19 and $20 a ton, and they are leveling it out for the balance of this year. The current contracts in hand, on which they are receiving coal today, are based on that $9.85 figure, but they are
142 charging coal out—for example, in September they charged out $14; in October, $13; November will be $12.50; December will bring it down, so that at the end of this calendar year they will have absorbed all the high priced coal, and will be taking in the current coal at approximately the $9.85 price.

In the comparative statistical statement for the year ended June 30, 1920, adjusted to present basis of revenues and expenses, coal is included at $11.02, which is what it cost them at that time.

The witness was asked what it will cost for the next 12 months, and said: "That is uncertain. On the present contracts, up to the first of April, it is going to cost us about $10.15."

Asked on what basis of mine price that is figured, the witness said: "There is one contract, as I remember it, on a basis of $3.85; one of $4.15; and one of $4.25." That will bring the average where he gave it, $9.85, which is the price alongside Portland. That is not on the engine. In addition to which there is the cost of discharging and hauling and distributing, which would make the coal run to approximately $10.25, on the present-day cost, under present contracts. Their coal finds its way through the Port of Richmond and Curtis Bay, piers on the lines of the B. & O. road. They
143 are getting most of it now by water from Baltimore through the Curtis Bay ports. Of their total cost price of coal, about $5.45 is for its transportation alone. Witness thinks $3.15 is charged up to sea freight.

Witness did not have the Boston & Albany, the Canadian Pacific, or the Grand Trunk in mind in speaking of the Maine Central as the only New England line which had a continuous dividend record. He was talking about the five New England lines, with the Boston & Albany out. The omitted lines have not been used in the New England group, in their summary of this case, witness supposes, because they decided they were not interested in this particular case.

Asked with reference to the next to the last page of his statement, showing that an additional revenue of $3,823,801 is required to earn 6 per cent on the present property investment, how much of that the State of Maine would take in taxes, the witness said: "The State of Maine's taxes accrue on the gross transportation earnings. For example, if our gross earnings on the Maine Central for the calendar year 1920 are $24,000,000, we would take the number of

miles that make up the Maine Central, divide it into that gross, and get the average rate per mile, and multiply it by the number of miles of line in Maine. That gives the State of Maine its
144 excise tax. That is the basis on which it operates."

Asked whether, if they got $3,823,801, that would give enough to pay the State of Maine taxes, and give 6 per cent in addition, the witness said: "Yes, sir. That is the way I understand it." The witness had taken the State of Maine's taxes into consideration in figuring that $3,823,000.

Coal was handled a good deal cheaper to witness' railroad during the Federal control period than they were able to get it after it closed. That was true of every user of coal, but it seemed like they got a little harder burden than some of them did.

Redirect examination:

The State of New Hampshire tax is a property tax. The same is true of the State of Vermont. Asked whether the freight on coal to Portland was greater than the cost of the coal, witness replied, "Yes, sir; that divides up $2.77 railroad freight—that is from the mine to tidewater; $3.15 sea freight; and 18 cents war tax, or $5.45 a net ton."

Recross-examination:

Asked whether there had been any agreement among the New England lines as to the distribution of any additional revenue which they may derive from a change in the divisions with the trunk lines through this proceeding or otherwise, the witness said: "There is a pretty general understanding, I think."

Asked what is the understanding as to what shall be done,
145 the witness said, "If I understand your question right, now, it is, how are we going to divide the money that we get through divisions, or from increased rates from the Trunk Lines. Won't there be a lot of factors that enter into that, as to how it may properly be agreed to, for distribution between the interested carriers? I could not say offhand what factors might enter. I do not know that I made the statement that there was any understanding. I referred partly to another matter, the division case. That has been rather the point that you are leading up to, has it not? I understand, Mr. Chairman, you want me to answer that in my own way. There has been considerable discussion, but I do not believe there is what you would call a 100 per cent agreement among all the interested parties in relation to that. That is as far as I would be willing to say. There is not any 99 per cent agreement. I mean by that that the matter has not been entirely agreed to. I do not see how it can be. There are some other factors in connection with it. I do not know that there was any tentative arrangement, except that when we made this application for the $25,000,000, on the basis of which we built that up, we thought that every carrier who participated might get a percentage division of what the original claim was for."

146 The Boston & Albany was out at the time, and the Canadian Pacific, and the Grand Trunk were out.

Asked whether any amount derived through this case from increases in divisions should be divided in the same manner, the witness said: "I think my mind works that way."

Asked whether that claim is based on earning the 6 per cent., the witness said: "No; not in our case. On the basis of our proportion of this case, it would not give us our fixed charges earned."

The witness means that the amount which they would derive from increased divisions on that basis would not permit them to earn fixed charges. Their proportion, figured in the manner described, would be about $1,800,000.

Redirect examination:

If some such sum as $25,000,000 were provided by the trunk lines and divided in accordance with their proportion, the amount the Maine Central would receive would be $1,800,000. That has nothing to do with whatever may be the result of an award by the Commission of increased divisions.

Recross-examination:

147 Witness thought he made it clear that on a picture built up of $25,000,000 of new money coming into a pool, where there were five members, that they were going to divide what they did receive on the same basis as what had built up the original amount.

Witness said that the picture he meant there was a living example of this particular matter, how it might find its way up, and then later find itself in distribution.

Witness thinks that whatever they are going to get in this case is going to be an award by the Commission, if anything, and they will probably say how it is to be distributed.

Recess.

PERCY R. TODD, called as a witness on behalf of the complainants, testified:

That he is President of the Bangor & Aroostook Railroad Company, has held that position since 1913; he commenced railroad work as a telegraph operator and clerk on a railroad which is now a portion of the Canadian Pacific. He was then traveling freight agent in Canada for four years for the Ogdensburg & Lake Champlain Railroad, now a portion of the Rutland System. He
148 was then general traveling agent, in Chicago, for three years or more, for the National Despatch Line, operating over the Grank Trunk Railway. He was then for six months commercial agent at Albany for the West Shore Railroad, and for a year chief clerk in the freight department of the West Shore Railroad at New York. He was then general freight and passenger agent for three

years of the Canada-Atlantic Railroad, now a portion of the Grand Trunk System. He then returned to the West Shore, and was in their service for 12 years; 3 or 4 years as general freight agent, and for the balance of the time as traffic manager. He was then, a little over one year, with the New Haven Railroad as vice-president in charge of traffic, and four years more as first vice-president in charge of both operation and traffic. These four years were from 1902 to 1906; and he was then with the Bangor & Aroostook Railroad, as vice-president, from 1907, and as president from 1913.

148–1 Asked to make a statement, in his own way, of the situation of the Bangor and Aroostook Railroad, the witness said:

The Bangor & Aroostook owns and operates 656 miles of railroad in northern Maine. It also owns the entire capital stock of the Van Buren Bridge Company, which has constructed and now operates an international bridge across the St. John River between Van Buren, Maine, and St. Leonards, New Brunswick, connecting the Bangor and Aroostook with the Canadian National Railways at St. Leonards.

The main stem of the Bangor & Aroostook extends from tidewater at Stockton Harbor, Maine, north to Van Buren, Maine, on the St. John River, a distance of approximately 260 miles, and in addition there are approximately 397 miles of branch woven through the agricultural and lumber-producing territory of Northern Maine.

148–2 Its chief connection is with the Maine Central Railroad at Northern Maine Junction, but it also has connections with the Canadian Pacific Railway at Brownville Junction and Greenville Junction, and with the Canadian National via the Van Buren bridge.

The Bangor & Aroostook serves Aroostook County, the eastern section of Waldo County, the eastern section of Piscataquis County, and the southwestern and northwestern sections of Penobscot County. Aroostook County is almost as large as the State of Massachusetts, and is today the richest agricultural section in New England, and is one of the most productive potato fields in the United States. Its fertile soil and its resources of water power and lumber have been known for decades, but prior to 1891 no development of any size had been commenced, either in agricultural, water power or lumbering operations.

In 1891 there was some railroad transportation in Waldo, Piscataquis and Penobscot Counties, but Aroostook County was almost entirely without railroad facilities. At the extreme east end of the county the town of Houlton, six or eight miles from the Canadian border, was reached by a line of the Canadian Pacific, which passed through Canada; so also were Presque Isle and Caribou, respectively ten and twelve miles from the Canadian border, and Fort Fairfield adjacent to the border. Along the St. John River there was access to lines of the Canadian Pacific by ferry across the river.

This transportation, however, was practically negligible, and there was little shipping done either from Houlton, Presque Isle, Fort Fairfield or Caribou, and these points had meagre sources from which to draw, the territory being limited to the distance
148–3 which horses and teams could carry perishables in temperatures ranging many degrees below zero. The railroad map of 1890 is a silent picture of this undeveloped area from which the entire eastern territory of the United States now draws such important supplies.

In 1890 the population of Aroostock County was less than 50,000, its polls but 10,000, and its value of estates but $10,000,000. Today its value of estates is in excess of $50,000,000. The population, however, is but 81,631, and with 6,408 square miles of territory the average is less than 13 persons to the square mile. The population is largely centered along the eastern border of the county. The largest town is Houlton, where there are now 6,200 inhabitants; the population of Caribou is 6,000; Presque Isle 5,600, Fort Fairfield and Van Buren 4,600; Fort Kent 4,200, and Ashland 2,400. No other towns in the county have as many as 2,000 inhabitants.

The only important town in Penobscot County served by this railroad is Millinocket, with a population of 4,500. In Piscataquis County, Milo has 2,900 inhabitants, and Brownville 2,700. All the other towns served have a negligible population.

In 1890 there were no industries throughout the entire territory now served by the Bangor & Aroostook Railroad. Agriculture, chiefly potato growing, was carried on in a small way, some timber was cut, but only that which could be handled through the medium of river drives; the vast forests were almost untouched by lumbering operations; the large lumber manufacturing mills of the present day were unknown, as were the enormous paper-producing plants, pulp mills and potato fields.

The actual construction of the Bangor & Aroostook began
148–4 in 1892 and 1893. It always has been and still is essentially a pioneer railroad, whose function is the development of rich virgin territory not otherwise served by transportation facilities. It was built into a wilderness, and the towns, mills, farms and industries in northern Maine all have been developed primarily as a result of the construction of the railroad.

Active operation was begun in 1895 with 263 miles of railroad. Construction gradually was extended until the system reached its present mileage in 1911.

The effect of railroad construction was remarkable. Lumber mills, saw mills, vast potato fields and other agricultural activities developed rapidly, and in 1901 the first mill of the Great Northern Paper Company was constructed in Northern Penobscot County. This industry has since developed into the largest individual paper plant in the united States.

The potato crop of Aroostook County now yields from twenty to twenty-five million bushels per annum, and during the season of 1919-1920 this crop brought into Aroostook County at least $45,000,000.

Submitted as Exhibit 31 are statements showing the tonnage of potatoes, lumber and paper handled by the Bangor & Aroostook.

The Witness (continuing): The industries, the farmers and the lumber producers are, however, large consumers of raw and manufactured materials, many of which are transported from distant parts of the country, and on which the transportation cost is a vital factor. In the Millinocket district the paper mills procure sulphur from Louisiana and Texas, coal from West Virginia. Lime is
148–5 brought to the extreme north end of the line along the Canadian border from Western Massachusetts and from points in the Provinces of Quebec and New Brunswick. Fertilizer and fertilizer ingredients are transported in large volume to Aroostook County from New Jersey, Maryland, Florida and other Southern States. Agricultural implements and machinery for the lumber mills are procured from New York, Illinois and the middle West. Bark extract for the tanneries comes from the Southern States.

This burden of distance substantially increases the cost of production, and there also is a similar burden of distance to the points of consumption in disposing of food products, manufactured lumber and the output of the other industries.

The operating conditions on the Bangor & Aroostook present many difficulties, some of which are of an unusual nature.

It is believed the most important traffic section of this railroad is located farther north than any other railroad in the United States, except the Alaskan Railroad, and for this reason has more severe weather conditions to contend with during the winter months than any other railroad in the United States.

Since construction first commenced, the lowest winter snow fall was in the season of 1915-1916, when the fall at Van Buren, Maine, was eight feet two inches. In the season of 1918-1919, the fall was twelve feet nine inches, and the usual fall is about eleven feet. From December 1st until the end of March the thermometr for at least 50 per cent of the time averages 20 below zero, and during each winter records of from 40 to 55 below zero are not uncommon.

During January, February and March, 1920, snowplow train miles equalled 22.4% of the freight train miles, and this is ex-
148–6 clusive of the expense of operating snowplows on freight and passenger trains.

The Witness: These weather conditions result in an abnormal reduction in the tonnage rating of locomotives in winter as compared with summer, and also result in undue detention to foreign freight cars, thus increasing the per diem payments for car rentals.

Due to the fact that the frost averages from four to five feet underneath the rails, the track heaves a great deal each spring when the frost begins to come out of the ground, causing many derailments and much additional expense in track maintenance. The maintenance season is necessarily short, and during the entire summer and fall of the year 1920 it has been necessary to work about ten per cent more than a full force of trackmen for ten hours per day, paying them time and one-half after eight hours, in order to get the track in

condition for safe operation during the coming winter. Other railroads that can do track work through ten or twelve months of the year escape this additional expense and these heavy burdens.

The freight traffic handled by the Bangor & Aroostook is largely of a seasonal nature, and this adds greatly to the operating expenses. Much of it is of a character that can be economically conveyed to railroad stations only by the use of sleighs, and as a result the freight traffic is largely condensed into the winter months when the cost of transportation to the railroad is substantially doubled.

148–7 There is very little through traffic, almost the entire tonnage originating on its own lines and gathered up from its many stations. In fact, the freight trains conduct almost entirely a pick-up service over the greater part of their runs, which involves a higher rate of pay than for through trains.

Also, the traffic on this railroad never balances as to direction. One week it is necessary to send engines light to Northern Maine Junction—our connection with the Maine Central—to haul trains of empty cars northbound, and the next week it is quite likely that engines will have to be sent north to pick up loaded cars southbound. In the other words, owing to the bulk of business originating on its own rails and moving to points off this line, the company necessarily has a very large percentage of empty car and light engine mileage; but, in spite of these conditions, as a result of intense supervision on the part of operating officials, it made 21.6 miles per car per day during October 1920.

In spite, however, of the physical handicaps surrounding operation in the undeveloped territory through which the railroad was constructed, the business of the company gradually increased until in 1916 and 1917 the property had reached a reasonable state of development and was beginning to look forward to earnings which would enable further development and place the company on a sound financial basis.

148–8 The Witness: The present system of the Bangor & Aroostook was constructed piecemeal, the amount which could be done from year to year being limited by short season for construction and ability to finance.

Active operation began in 1895 with 263 miles of railroad, but it was not until 1911 that the present system was developed. Since 1911 no additional lines have been constructed except the Van Buren bridge connection.

Throughout this long period of development, the property, although fully maintained, was carefully conserved by most economical management, and with the close of the year 1916, the traffic fruits of the expansion policy began to be realized, and it was evident that the company had entered into a period of good business and reasonable prosperity.

The traffic development had begun to match up with the construction, and it was possible to consider a reduction in the bonded and floating debt through the issue of additional capital stock, and also to consider some further extensions in the interest of public service.

In the winter of 1916-1917 the company seemed so fully to have emerged from the burden of the cost of new extensions and its prosperity so assured, that bankers became interested in a plan for refinancing. A program was effected under which preferred stock—still held by the bankers who acquired it, and not marketable under present conditions—and some common stock, together aggregating $3,981,400 par value, were substituted for mortgage bonds and maturing notes aggregating $4,300,000 par value.

The corporation's financial structure thereby was placed on a far more sound basis, and with the steadily increasing tonnage
148–9 it looked ahead to years of increasing prosperity. These conditions made it possible definitely to plan additional construction. Surveys were made for a branch line extending northeasterly from the main line north of Caribou into the township of Caswell.

The construction of this 18-mile extension at an estimated cost in 1917 of about $600,000 would have opened up substantial new agricultural territory, which would have substantially increased production.

Also there was planned an extension running northeasterly from Littleton to connect with a line in New Brunswick operated by the Canadian National Railways. This 8-mile extension, which then could have been constructed at a cost of approximately $300,000, not only would have opened up new territory, but would have furnished means of procuring through business from points in New Brunswick.

In addition there was under consideration a branch line extending westerly from a point near Ashland into the famous Allegash territory, where the resources of lumber and water power are beyond description.

The entry of this country into the world war made it necessary to abandon these projects, and today they cannot be accomplished because of the company's financial condition. As recently as during the last two months a proposition has been made to the company with respect to giving aid in the financing of a line into the Allegash territory, but even such a proposition as guaranteeing bonds is beyond the dictates of good judgment, in view of the company's present earnings and the general financial and credit position.

148–10 The possibility of opening up new territory in Aroostock County is almost unlimited. Nowhere are there greater natural resources, but nothing can be done by way of progress in this direction until earnings are assured and a fair return is had on the present investment.

Probably no railroad in the United States has been more adversely affected by the increased cost of fuel and other materials and supplies and increased wages which have come about since January 1, 1918.

There are no coal mines along the line of the Bangor & Aroostook, nor within any reasonable distance thereof. It is not in position to send cars to mines over one thousand miles distant, and hence

has not the advantage of a coal-originating road or of a road not far from coal mines possessing a supply of coal cars.

The Bangor & Aroostook is compelled to purchase its coal like any other outside consumer in competition with all other industries. In 1916 its average cost of coal delivered on cars at its tidewater terminal at Stockton Harbor, Maine, was $3.43 per gross ton. In 1917 this cost had increased to $4.95. During 1918 the average cost was $6.60; while during 1919 it increased to $6.70.

These prices were low in comparison with those paid by various industries in northern Maine, but this low price was due to a favorable contract made in 1914, effective April 1, 1915, and which expired April 1, 1920. The present cost of coal, including the recent freight increases, is $10.29 at the tidewater terminal, Stockton Harbor, Maine.

In addition to this, the average handling cost per ton, exclusive of cost of hauling from tidewater to coal storage plant, is $1.02
148–11 per gross ton.

The Witness: Taxation is another burden which bears heavily on the Bangor & Aroostook. During a period of 20 years from and after the beginning of construction in 1891, there was refunded to this company, by legislative authority, 95% of the annual state taxes; this in order to render assistance in the construction and development of the property.

When this period expired in 1911, the company found itself in position to pay the state taxes, which are in the form of an excise tax based on the exercise of the franchise but measured by gross receipts. Present conditions, however, make this tax a heavy burden. The assessment is a percentage of these gross receipts, varying in accordance with the earnings per mile of road.

In 1921, the company will be obliged to pay the maximum rate this year of 5½% upon its gross earnings for the calendar year 1920. In 1916 and 1917 the state tax was something less than $120,000. In 1918 it increased to almost $172,000. In 1919 the tax was $214,000.

During the current year, in addition to Federal and local taxes, the amount paid to the State has been approximately $233,000. In 1921 this state tax will increase to approximately $380,000, and in 1922 will be approximately $440,000.

148–12 The additional 10% increase in freight rates and the 20% increase in passenger fares was granted on the assumption that it would offset the increase in operating expenses resulting from the award of the Railroad Labor Board. The increased expense to the Bangor & Aroostook as a result of this award will be in excess of $600,000, and if the present volume of business continues the above-mentioned increases in freight and passenger rates should yield approximately that amount; but of this amount the company will have to pay out over $33,000 to the State, because of the tax on its gross receipts, and therefore will fall that much short of procuring sufficient revenue to meet the increase in wages resulting from the Labor Board's award.

The Witness: I would like to make that tax matter—the last portion of it, a little clearer. The 10% increase in freight rates and

20% in passenger fares naturally has to go in our gross earnings; and because it is in gross earnings it is subject to the state tax of 5½%.

During the past two years wages have increased on the line of the Bangor & Aroostook greater in percentage, it is believed, than on any railroad in the United States.

The Witness: The recent increases resulting from the award of the United States Railroad Labor Board will add over $600,000 to the annual payroll of the company, and it is to be noted that a 10% increase in freight rates and a 20% increase in passenger fares and charges is less than the increase in wages resulting from the recent award.

148–13 In 1917, the actual payroll for the year was $1,568,969.78. Under the present scale of wages established by order of the United States Railroad Labor Board, and after putting into effect all possible economies, the annual payroll will be at least $3,800,000 per annum for approximately the same number of employes.

The aggregate of freight ton miles and passenger miles during 1917 was greater than during any preceding or succeeding year.

Prior to these wage increases, we were able to obtain labor at a very much lower level than roads in more thickly settled portions of the country. This was due to the fact that living costs, as I know from my own personal knowledge, are less than they are in, say, Boston.

148–14 I will give one little illustration there. There is no place along the line of the Bangor & Aroostook outside of Bangor where there is a town large enough to have a street railway. Railroad men employed in Boston have to pay 10 cents carfare twice a day. There is a little item of expense which does not exist on our line. Rents are higher in Boston than at any point on our line.

During the time mentioned our labor consisted almost entirely of men who lived in that territory and who had lived there previously, who were born there, and had always lived there and still do.

The figures in the fifth column of exhibit 37 relating to wage costs show the percentage of increase in October 1919 payroll over the same payroll in 1914 was as follows:

Engineers	97.68%
Firemen	131.39%
Conductors	141.82%

etc., the total average being 132.76%. Those figures are prior to the Labor Board's award. At the present time the percentage increases over the 1914 rate as shown in column 7 of Exhibit 37 are as follows: engineers, an increase of 128.05%; firemen, an increase of 181.37%; hostlers and hostlers' helpers, and increase of 224.98%; conductors, an increase of 158.84%; trainmen, 185.64%; yardmasters, 158%; telegraphers, 151.35%; shopmen, 257.04%; stationary firemen and oilers, 168.69%; maintenance of way employes and shop laborers, 188.61%; signalmen, 225%; clerks, freight handlers, express and station employes, 157.25%; avearge increase, 189.72%.

148–15 The Witness: The increase recently resulting from the decision of the Commission in Ex Parte 74 not only will be insufficient to enable the Bangor & Aroostook Railroad Company to earn a fair return upon its property held for and used in the service of transportation, but it is doubtful if the company even will be able to meet its fixed charges. Yet no carrier renders a more important service to the community immediately served or to the entire Eastern territory at large.

Compilations have been made with respect to the 12 months ended October 31, 1919, the calendar year 1919, and the 12 months ended June 30, 1920. The accounts have been restated to show what the revenues for those periods would have been had the decision in Ex Parte 74 been in effect; what the expenses would have been under present wages, cost of coal and cost of other materials and supplies, and the net railway operating income thus resulting.

148–16 The Witness: The period of 12 months ended June 30, 1920, represents a normal tonnage situation, and it is to be noted that the net railway operating income to be expected under such conditions exceeds the fixed charges by only about $218,000. Dividends cannot be paid to the preferred capital stockholders or the common stockholders.

Receivership for the Bangor & Aroostook would bring disastrous results to railroad transportation in northern Maine. The present bonded indebtedness of the company bears interest at an average rate of but 4¾% per annum. In event of financial disaster it undoubtedly would be necessary to refund all, or a substantial part, of this indebtedness at the current interest rates of from 7% to 8%. This would put upon the company, and upon the territory which it serves, a fianancial burden of such weight as not only to prevent future development, but to cause the present development to lose ground.

That the continued successful operation of this property is essential not only to northern Maine and to New England, but as a source of supply for the entire Eastern and Southern sections of the United States, is too apparent for discussion. Yet under existing conditions of revenue and expenses, successful operation cannot be had; service will deteriorate, and development of an exceptional territory will be retarded.

148–17 That the Bangor & Aroostook should be allowed a greater division on this important traffic is evident. It is a valuable traffic to all other participating carriers, both east and west and south of the Hudson River.

To permit, under present conditions, the financial or operating break-down of a carrier whose construction and operating history is such as that of the Bangor & Aroostook, a carrier which has contributed so greatly to the development and prosperity of the territory which it serves, and which until up to the period of Federal control not only had held its own, but had established itself upon a sound financial basis, would be to discourage railroad enterprise, to retard development of virgin territory, and render impotent a system which stands out in Eastern territory as an exceptional achievement.

I spoke of our business being of a seasonable character. The po-

tato crop moves at different times of year according to the market price. It begins to move ordinarily in September and continues until the beginning of the following June, but the heavy shipments are made in November and December, the winter months. That is because about 35% of the crop is for seed purposes in the southern states. We have a heavy volume of business moving in the late fall and early winter. Lumber moves very largely in the winter. It moves somewhat all the year around but the greater part in the winter. Our summer passenger business is for a very short season, and is very limited in amount. Not over one-eighth of our revenue is produced by passenger traffic.

Witness was familiar with the conditions in southern New England on the New Haven road for 5 or 6 years. There is a very decided difference in the conditions under which railroads must be operated in New England from those under which such roads as the West Shore operate.

For instance, when witness was on the West Shore, as well as he can recollect now, the shortest freight train run they had
149 was between New York and Newburgh, 56 miles; whereas another witness testified this morning that on the New Haven they have runs of 28 miles, for which they have to pay for 100 miles.

That was one of the greatest embarrassments witness had when in charge of the operation of the New Haven road—the almost impossibility of getting 100 miles' work done for 100 miles' pay. That was no fault of the men. They were there, and they were willing to give 100 miles' service. It was brought about by the multiplicity of small branches.

Witness remembers particularly one branch run from Middletown to Portland. They ran three round trips a day. They only got 60 miles out of it. Now, the men were willing to run 100 miles, but the situation of the road was such that they could not give them a hundred miles run.

A great deal of time was given then, and, witness understands, has been given ever since, to try to find ways to extend those runs, so as not to be paying for so much labor which was not performed.

Asked whether he regards that difficulty as inherent in the railroad problem of New England, or only in parts of New England, the witness said: "Only in parts of New England. One of the things which has helped the Bangor & Aroostook to maintain a low
150 operating ratio until recently is the fact that we haven't got these large terminals that the other roads have, and also the fact that we cannot average—not a hundred miles, of course, but very much better than a line like the New Haven."

The conditions the witness describes have reference particularly to the New Haven, and, in some degree, to the Maine Central, and in no degree to his own road.

Asking whether there was any way of overcoming that, the witness said: "Well, I tried my best when I was there to overcome that, and I do not think we were able to increase the number of miles per day that a train crew could make very materially. I did succeed

in running through passenger equipment from New Haven to Boston."

The same thing obtains absolutely with regard to the freight service. Take the same Middletown to Portland run. It is the same run,—only you cannot get to make three round trips with the freight crew. Probably two round trips would serve, but you would have to pay 100 miles for that service.

There are other little branch lines which make up a large part of the expense of the Boston & Maine and the New Haven. With the most careful management in the world, witness thinks that if they get 70 per cent of the miles they are paying for, they are doing very well.

151 Witness does not think of any other characteristic difficulties in New England that have come within his own experience. The principal trouble is the short routes and the impossibility of getting the mileage out of the men, which they are perfectly willing to give, and which they are under contract to give.

Substantially all the coal used by the witness' railroad comes from mines in West Virginia, on the Baltimore & Ohio Railroad. Substantially all of it is moved over the Baltimore & Ohio and the Reading to Philadelphia, and by the Reading large line from there to Stockton Harbor, Maine, which is their tidewater terminal. A small amount is moved by way of Baltimore and steamer. They made a contract in 1914 for 5 years. It became effective in 1915, and was for 5 years, and it expired the first of April of this year. That contract was at 83 cents at the mines, plus any increased labor or freight costs.

The present contract, as witness remembers, this year, is $4.10 a gross ton at the mines, and the cost on their cars at Stockton Harbor is $10.29 a gross ton, showing that far more of the cost is paid out in transportation than in the mine price of the coal.

GEORGE H. EATON, called as a witness on behalf of the com-
152 plainants, testified:

That he is assistant freight traffic manager of the Boston & Maine Railroad, and has occupied that position for three years; previously had been in the traffic department of the Boston & Maine Railroad for some thirty-odd years, dealing within the last 15 years almost entirely with rate structure and divisions.

As Exhibit 39 shows there is no bituminous or anthracite coal produced in New England, but 490,488,233 tons are produced in the Eastern States. The production of pig iron in New England is 13,678 tons, as compared with 27,286,843 tons in the Eastern States. The number of blast furnaces in New England is four, and in the Eastern States, 365. These industries furnish a highly desirable class of tonnage.

Most of the present divisions were established before the witness began to serve the New England railroads.

In the application of the Anderson Scale, Zone A, or the lower basis of rates, embraces the Fitchburg division of the Boston & Maine and everything south of it, and runs up as far as, generally

speaking, on certain lines, Windsor, Vermont, and Portland, Maine. The dividing line extends east from Rotterdam Junction, to Portland, Maine, with two stems leading north to Concord, New Hampshire, and Windsor, Vermont. The Zone B is the higher
153 basis of rates, there being a spread of 10 per cent between the two.

These scales are not uniformly applied, or applied in their entirety, but are greatly depressed by reason of the hold-down of the rates.

Sherbrooke, Quebec, is the most northerly point on witness' line, and from Sherbrooke, Quebec, to southern New England it is impossible to apply the Anderson Scale in its entirety because of the fact that the rates from Sherbrooke to Newark, New Jersey, beyond, hold down or depress the Anderson Scale to that territory.

With respect to Lewiston, Maine, the rates are held down as to territory principally in the extreme western part of Massachusetts and Connecticut, and the eastern part of New York, by the overhead rates from Lewiston, Maine.

From Gardner, Massachusetts, the first-class rate to New York City is depressed to the extent of 12 cents per 100 pounds. The second-class rate is depressed to the extent of $6\frac{1}{2}$ cents per 100 pounds. The first-class rate is 74 cents, and would be, under the Anderson scale, 86 cents.

From Lawrence, Massachusetts, the first-class rate is $83\frac{1}{2}$ cents, and the Anderson scale, full measure, is 88 cents. It is depressed $4\frac{1}{2}$ cents. From Berlin, New Hampshire, an extreme point in northern New Hampshire, the first-class rate is $\$1.01\frac{1}{2}$. The
154 Anderson scale is $1.11, a depression of $9\frac{1}{2}$ cents.

On the Boston & Maine, the local class rate tariff is published in a rate reference form. The rate reference numbers run from 1 to 95. Taking Rate Reference No. 77, the full measure of the Anderson scale, first class, is 87 cents. Now, there are points on the Boston & Maine Railroad between which that first-class rate of 87 cents is depressed to as low as $66\frac{1}{2}$ cents. That is due principally to the overhead rates to Newark, New Jersey, and Albany, New York, applying through the Harlem River and Mechanicville gateways. The Boston & Maine has no local rates to Harlem River. Its local rates are affected to some extent by the Nawark rate. The witness has not been able to calculate what their road losses were by reason of the hold-down of the Anderson scale.

The rates between Trunk Line and New England territory are made on the group plan. Some few years ago there were 6 New England groups and 24 groups in Trunk Line territory. In 1914 the New England groups were increased to 30, because of the fact that the local class rate structure on the Boston & Maine Railroad was revamped and it was necessary to increase the overhead rates in order to permit the application of the new class scale. That had the effect of disturbing and upsetting all relationships that existed,
155 with the exception of the rates between Trunk Line points and the Boston group, where the old relationship still exists, which is, to the Pittsburgh group, 5 to 2 over New York; and to the

Buffalo group, 5 to 2. The intermediate rates between the first and sixth classes vary somewhat. The differentials are not the same in both cases.

There are 30 rate groups on the Boston & Maine Railroad. There is a Brunswick group on the Maine Central Railroad. The rates, from points east of Brunswick on the Maine Central Railroad are made on an arbitrary basis over the rate to Brunswick.

Practically the entire New England, with the exception of the Bangor & Aroostook Railroad, is included in the Boston block. The Boston rate group extends from just a few miles east of the Hudson River to as far east as to Mount Desert Ferry, or perhaps it can be better expressed by stating Bangor, Maine, as the most eastern point. That applies the same way in both directions, eastbound and westbound.

The Boston rate applies to that entire group. The eastbound rates are made arbitraries of 7 to 2 over New York. Westbound there are differential rates operating over the Canadian Pacific Road, which are 5 to 1 under the standard rate; and from the Rutland and Central Vermont, or the so-called Burlington group, the differential is 10 to 2.

156 Rates between New England and points in Canada are made by dividing eastern Canada into three groups, the Montreal, Quebec, and Ottawa groups; and the rates from the Boston rate territory, which covers practically all of the Boston & Maine Railroad, are made with relation, or differentials under the rates to C. F. A. points.

There are no joint rates to points in Canada west of Fort William, or Port Arthur.

In making the trans-continental rates, practically all of New England is one rate group, and the rates applying from that group are the same rates that apply from Trunk Line territory, or New York City.

Witness has not been able, after a more or less exhaustive study, to trace the history of all these divisions. It is not available because they are so old. Nobody that witness can find knows them. Nobody in New England knows the history of the majority of these divisions. They merely have grown up. The railroad system of New England, many years ago, was comprised of a number of separately operated roads. Each had its own preferred routes, and each had its own basis of divisions. As the consolidations have taken place from time to time, the divisions that were found have merely been continued. There has been some extension of them from time to time, but the general basis has continued from that time

157 to now.

Witness has been able to trace the history of certain divisions through Mechanicville and Rotterdam Junction.

Prior to 1900, the only difference in the make-up of the Boston & Maine System then, from what it is now, was that the Fitchburg Railroad was operated separately. The Fitchburg Railroad was leased in 1900 by the Boston & Maine Railroad. That was the last acquisition of the Boston & Maine.

The other divisions were made at a time when the railroad situation was not the same as it is now in New England. The railroads were operated separately, and the divisions were made via their preferred routes, and in many cases divisions were based on competition. In spite of the change in the railroad situations, the basis for the divisions remained the same.

Prior to the lease of the Fitchburg Railroad by the Boston & Maine Railroad, there were prorate arrangements as between the New York Central and its connections and the Fitchburg Road. Witness should have said via the West Shore Railroad. There were no divisions to Boston & Maine territory, except to a very limited extent, and those divisions applied by way of the Boston & Albany route, the traffic being interchanged with the Boston & Maine Railroad at either Boston or Worcester. Upon the lease of the Fitchburg, it
158 was the desire of the Boston & Maine to make the best possible use of the Fitchburg road that it could, and the plan was to establish prorating arrangements to the entire Boston & Maine territory in connection with the New York Central and its allied lines and connections. The territory was grouped for division purposes, the mileage to the various groups being made by adding certain mileages to the mileage that was allowed the Fitchburg Road by the West Shore. The Fitchburg was made up of one block extending from Rotterdam to Boston, a distance of 212 miles.

In the construction of the divisions, that distance was used for the entire block. That mileage was taken as the basis, and to reach the Boston & Maine territory lying north of Fitchburg, mileages were added to that Fitchburg distance in order to produce the prorating mileage blocks. To illustrate, there is a block known as the Portland block. The distance from Boston to Portland is 108 miles. The prorating distance which had always been allowed the Fitchburg was 212 miles. That made a combination block mileage of 320 miles, but, as a matter of fact, that was the actual distance, because the traffic was at that time handled through Boston. At the time these divisions were made, the traffic was handled through Boston. In other words, when these divisions to Boston and Portland
159 were established, the actual mileage was used; but, prior to that, the divisional arrangements with the New York Central, through the Boston & Albany, and by the way of Boston, allowed the Boston & Maine Railroad its actual distance to Portland, 108 miles; so that we have there merely the putting together of two things that had for many years prior to 1900, existed. The Concord block, so-called, was established in the same way, with 212 miles for the Fitchburg Line, and 147 miles for the Boston & Maine, the actual distance to Portland, by the way of Rochester, and the Worcester, Nashua & Rochester Division of the Boston & Maine. The Concord block was extended to include Portland, and also Intervale, New Hampshire, and as far north as Plymouth, New Hampshire, and Windsor, Vermont. So, there again, we put two things together that had existed for many years, in order to make this mileage block. The Rockland block was made in exactly the same way, by putting together the Fitchburg mileage and the actual distance from Boston

to Portland, plus 117 miles, which was the prorated distance allowed to the Rockland block on the Maine Central Railroad, by way of the Boston & Albany route.

On certain traffic interchanged with the western lines, the Boston & Maine receives a terminal allowance. That terminal allow-
160 ance is in controversy. It has been one cent per 100 pounds. That terminal allowance is accorded substantially on all traffic via all gateways, except to points on the Fitchburg Division of the Boston & Maine, extending from Rotterdam Junction to Boston, and including Boston, via the Rotterdam and Mechanicville routes. Rotterdam Junction and Mechanicville are the principal gateways to the West.

On traffic moving through those gateways to or from points on the Fitchburg Division, including Boston, the Boston & Maine does not get any terminal allowance. The other exception is that the Boston & Maine receives no terminal allowance on Boston & Worcester traffic by way of Harlem River. The Boston & Maine claims that its terminal allowance of one cent has been increased by reason of the 15 per cent case, the 25 per cent increase, or the 40 per cent increase. They have taken the money on all bills that they have settled, but have been unable to collect it on all bills that they did not settle. Their western connections have not agreed that the one cent basis should be increased.

Complainants' Exhibit No. 42 was prepared with the idea of indicating, in a general or typical way, the present divisions, and how they are made. There are thousands of percentage divisions, and it is almost impossible to produce a picture of them. They have
161 tried to do it in this typical way, by selecting typical New England points, typical trunk line and typical C. F. A. points.

The first sheet shows how the divisions are made from typical points on their line, or from typical blocks on their line, via Troy to New York City. The first column contains the name of the division block, and opposite there is a crayon color, which corresponds with the blocking on the map attached to the exhibit. The colors shown on the first sheet correspond with and match the colors on the attached map.

The heading "Prorating Mileage" indicates the miles that are used to each block, in order to obtain the per cent which is used in dividing the revenue. That shows what mileage is accorded to New England, and what mileage is accorded to the lines west, in making these divisions, as distinguished from the actual distances.

Then, that is set over against the actual distance, and they also show the excess mileage, if any, both for New England and for the lines west.

That first exhibit shows that the New England roads receive an excess mileage varying all the way from 4 miles, as a minimum, to
236 miles as a maximum, whereas the lines west receive no allowance whatever in addition to their actual haul. But, witness
162 would not overlook the fact that in addition to the percentages which are cast by the prorating mileages, there are terminal

deductions. In that instance the lines west receive in some instances a terminal deduction as well as the New England lines. These exhibits have been prepared by using a terminal deduction of 2 cents, which the Boston & Maine claim is right and proper, instead of one cent, which is claimed by the trunk lines.

This makes these divisions look more favorable to the New England lines than they really are, on the basis of what the trunk lines are now willing to do with regard to that arbitrary.

That has been done because witness feels that the arbitrary of one cent per hundred pounds ought to be increased to two cents, in fairness, and because he feels that way, he has used the two cents in his exhibits.

At certain New York stations on the New York Central Railroad there is a terminal of 2 cents, and at other stations, particularly where there is a lighterage deduction, there is a 4-cent terminal that goes to the New York Central. But the New York Central does, on this New York traffic, get at least the same terminal deduction that witness claims is fair for his road, and, as a matter of fact,
163 twice what they are actually getting, from the point of view of their connections, even where the New York Central performs no lighterage service whatever. They get that terminal while the Boston & Maine receives no terminal to its so-called Boston block, or on export traffic.

Asked whether these figures control in the division of all rates on all traffic, class and commodity, between New York City and New England, Boston & Maine points, the witness said: "There may be one or two isolated cases where there is a special division. I recall a special division on lumber and paper where the New York Central exacts an arbitrary south of Troy as its proportion, instead of its percentage division; but, substantially, these divisions apply on all traffic, class and commodity."

Where these divisions are made on a percentage or arbitrary basis of this kind, they apply to all traffic moving over that route, both class and commodity. There are some exceptions, but that is the general rule.

The carriers participating in these rates west of Troy are the New York Central.

The second sheet shows in the same way how the divisions are made via Jersey City to points in the Baltimore, Philadelphia and Pittsburgh groups in connection with the Pennsylvania Railroad.
164 The form of this exhibit is exactly the same as the previous one, which carried the New York percentages.

The exhibit shows that the excess mileage which the New England lines east of Jersey City receive varies from 4 miles to 178 miles, and in some instances the constructive mileage or prorating mileage is less than the actual distance, varying from 39 miles to 71 miles. Witness means to say that in some instances the New England lines get 71 miles less than their actual mileage. This exhibit refers to traffic moving via Jersey City in connection with the New Haven. The New England figures shown here apply to all of the Boston and Maine, in connection with the New Haven, to Jersey City. It is a joint haul.

West of Jersey City the Pennsylvania is the only carrier involved.

The prorating mileage for the first group, for New England, is 200 miles. The minimum actual distance is 239 miles. That makes a minimum excess mileage of 39 miles. So that, in that instance, New England, performing a minimum haul of 239 miles, gets only 200 miles as its proportion, as its prorating distance. The situation is substantially the same with the next figure of minus 41.

Asked to explain how it is that in some instances New England gets an allowance, if it may be called such, of minus 41 miles, in
165 other words, gets substantially less, or slightly less than its actual haul, whereas it gets, as a maximum, 178 miles in excess of its actual haul, and asked if counsel's understanding was correct that that is due to the size of the division block, the witness said: "Yes, sir. If you will refer to the map, you will notice that the red group begins just north of Springfield, the connection between the Boston & Maine and New Haven being at Springfield, and extends as far east as Portland and Intervale, and as far north as Plymouth and White River Junction."

Taking Holyoke, which is right near the southern end of that mileage block, you would, in that instance, get, as your proportion or division, a constructive mileage that very greatly exceeded the actual haul performed. Whereas, if you took the other extreme, Portland, you would, in that instance, get less than your actual distance.

As to the lines west, the minimum excess mileage varies from 15 to 82 miles, and, in some instances, the lines west receive a prorated mileage which is 15 miles less than their actual distance. Their territory is grouped for prorating purposes.

The footnote on that page indicates the steamer Maryland arbitraries that accrue to the line east of Jersey City, to take care of the transfer between the Pennsylvania Railroad and the New
166 Haven Railroad. This refers to the floating service between the Pennsylvania piers in Greenville and Harlem River. Those so-called steamer Maryland arbatraries are accorded to the New England lines because of that service. The New England lines perform that service.

Asked to explain, from the next statement, what he meant by the words "arbitrary" and "balance" under "Prorating Mileage," the witness said: "That was a case, Mr. Chairman, where we could not determine from our records what the prorating mileage allowed the New England roads was. The record is so old we could not find out. That black block, if you will notice the map, covers the line of the Fitchburg Railroad, extending from Rotterdam Junction to Boston. We have no record of the prorating mileage allowed the Fitchburg Road, so that we were forced to show that as an arbitrary mileage allowance. In other words, we do not know how the percentages shown in the last column, of 33, 36, and 26, were arrived at."

This exhibit shows, for the New England lines, an excess mileage varying from 55 miles to 267 miles; and for the lines west of New England junctions an excess mileage varying from nothing

up to 412 miles. This shows the bases of divisions from
167 these Boston & Maine groups to the Altoona, Harrisburg & Pittsburgh groups on the Pennsylvania Railroad, when traffic is routed via Mechanicsville. The only New England carriers participating are the Boston & Maine, and the other carriers are the Delaware & Hudson and Pennsylvania west of Mechanicsville.

This particular exhibit shows that the lines west receive generally a constructive mileage that is at least as favorable as that received by the New England roads on this particular traffic. For example, taking the first three or four there, it will be observed that the New England lines receive a maximum of something over 200 miles, and the lines west receive a maximum of over 300, and in one or two instances, over 400. The greater portion of the Boston & Maine traffic originates and terminates in those blocks within a radius of 100 miles from Boston.

Asked whether it is generally true, with regard to these exhibits, that the instances where they receive an excess mileage will be found to apply to and from those portions of their line near the State of New York, the western end of their line, whereas the instances in which the divisions seem to be unfavorable to them, relatively, are in the territory around Boston, the witness said: "I should say it was a correct statement, yes, sir."

The portion of their line where the heavy density exists
168 yields them less revenue because of the small divisions received on that traffic. If the situation were reversed, so that their favorable divisions applied from the manufacturing and heavy density district around Boston, and the unfavorable divisions from the western part of their line, it would operate very greatly to their advantage.

Referred to the next statement, marked Sheet No. 32, which was said to show an excess mileage for the New England lines varying from 2 miles up to well over 200 miles, whereas, for the lines west, it showed, for the first half of the statement, Buffalo and Rochester, a slight reduction in their actual mileage, and for the lower part of the statement, Scranton and Syracuse, a rather substantial addition to their actual mileage, and asked to explain why such a sharp discrepancy or difference exists, the witness said:

"Well, I have no record of this, but I should assume that when these divisions with the Erie Road were made via the Mechanicsville gateway, that their mileage was held down to substantially actual mileage, perhaps a little less, due to competitive features. That is the only way I can account for it."

Asked whether this statement simply serves to illustrate the
169 perfectly absurd way in which these divisions are arranged, the witness said, "Yes, sir, it does."

Asked whether his study of these divisions indicates any well-defined plan upon which they are based, the witness said:

"Well, the result of the study indicates to me that the basis, taken as a whole, and compared, one gateway with another, is such as to bring about an inequitable distribution of joint revenue. The di-

visions, apparently, and as shown by these sheets, are full of inconsistencies. You might say they are just as much inconsistent as the rate structure in some parts of the country is."

The carriers participating in this traffic to the Buffalo and Rochester group, besides the Boston and Maine and the Erie, are the Delaware & Hudson, as an intermediate carrier to the Scranton and Syracuse groups. The carriers involved in Sheet 33 are the Boston & Maine and the New York Central. The Boston & Maine minimum and maximum excess mileage from Boston to Buffalo is from 3 miles to 85 miles. The New York Central is from 10 miles to 66 miles. From the St. Johnsbury, Vermont, group, the minimum and maximum are from 88 miles to 143 miles for the Boston & Maine. The greatest amount of traffic moves from the Boston group.

Sheet 34 refers to traffic via the Harlem River to
170 points in Central Freight Association territory, and it shows that the New England lines receive a minimum and maximum addition to their actual mileage varying all the way from something over 100 miles to perhaps something over 300 miles. Whereas, for the lines west, the minimum is in the neighborhood of 11 miles and the maximum over 100 miles. These rates are participated in by the New Haven. Witness' line does not reach the Harlem River. In all instances where Harlem River is shown as a gateway, it is in connection with the New Haven. In all instances the terminal allowances are deducted before prorating. The actual miles of service in New England are very much less than the service west of the New England gateways, the actual distance west being perhaps, in some instances, 2 or 3 or 4 times as great.

Referring to Sheet No. 35, the Boston & Maine is the only New England carrier participating. The lines west are to Chicago, the Canadian Pacific and Wabash. To St. Louis, the same. To Indianapolis, the Canadian Pacific, the D. T. & I., and the L. E. & W. The excess for New England runs from a minimum of 22 miles to a maximum of 245 miles, and for the lines west, from a minimum of minus 14 miles, to 384 miles.

Referring to Sheet No. 36, that shows the same informa-
171 tion with regard to C. F. A. territory, via Rotterdam Junction. The Boston & Maine is the only New England carrier. The lines west are mainly the New York Central System west of Rotterdam Junction.

Referring to sheet No. 37, the New England lines participating in the traffic to St. Johns are the Boston & Maine and the Central Vermont. The New England excess mileage varies from the minimum of 9 miles to a maximum of 277 miles. For the lines west, from a minimum of minus 11 miles to a maximum of 192 miles.

Referring to Complainants' Exhibit No. 43, Sheet No. 1, and taking up the rates to New York City, the points selected in this exhibit were chosen as typical points within the various Boston & Maine division or prorating rate groups. Troy is the division point. The Boston & Maine is the only carrier east of Troy. The carrier west of Troy is the New York Central. From Boston to New York, via Troy, the total distance is 336 miles, which is divided, 190 miles for the Bos-

ton & Maine, and 146 miles for the New York Central. The first-class through rate is 74 cents. The proportion received by the Boston & Maine is 40.6 cents, on first-class. The Anderson scale for the distance of 190 miles is 82½ cents. The Boston & Maine receives 49.2 per cent. of the local rate. The revenue accruing to the New
172 York Central is 33.4, on first class. Their local rate for the same distance is 55.5. That is the actual rate from Troy to New York. In that instance the New York Central gets a larger percentage of its local rate than the Boston & Maine of its local rate. The New York Central gets 60.2 of its local rate, as against the Boston & Maine's 49.2 per cent. of its local rate. The ton mile earnings of the Boston & Maine on first class are 4.27. For the New York Central, they are 4.45. The Boston & Maine receives one cent less than it would receive under a mileage prorate, per hundred pounds. The percentage less is 1.3 per cent.

The New York Central receives one cent per hundred pounds in excess of the mileage prorate, or 1.3 per cent more than the mileage prorate.

Taking other points of origin on that same sheet, for instance, Keene and Fitchburg, the Boston & Maine would receive under a mileage prorate, 45.5 per cent. It receives 12.1 cents per hundred pounds in excess of a mileage prorate. On sixth class, it receives 3.6 cents per hundred pounds in excess. The next figure down shows a percentage of excess over the mileage prorate, 16.4 on first class and 14.9 on sixth class. From Keene to New York, via Troy, the
173 Boston & Maine gets 16 and 14 per cent more than the mileage prorate would give them.

Adjourned to Friday, December 17, 1920, at 10 o'clock A. M.

174

Washington, D. C.,
Friday, December 17, 1920—10 a. m.

GEORGE H. EATON, resumed the stand for further

Direct examination:

Counsel for complainant (Mr. La Roe) having stated:

"It is only fair to say that by a judicious selection of items from this exhibit you can prove almost anything, and the only fair way to consider the thing is by taking it as a whole. For example, Mr. Chairman, if you take Johnsonville, N. Y., as a point of origin, it gives the Boston & Maine only about a 16-mile haul, and naturally the Boston & Maine will get out of that substantially more than a mileage prorate. On the other hand, if you take Newark, N. J., as a destination, via Harlem River it might well be contended that that destination was hardly typical, because it gives the Pennsylvania only a very short haul. So, in considering these items, I think the only fair thing to do is to try to weigh all of them together and consider the net result, as a whole," he then asked the witness to proceed with Johnsonville, on the first page of this exhibit, and tell what item "1." shows, and the witness said:

175 "Item 'L' shows that the Boston & Maine receives 71.2 per cent of its local rate, its local rate measured by the full Anderson scale."

Item "K" indicates the Anderson scale for the New England distance. The figure inserted as the Anderson scale is the Anderson scale in its full measure. The Anderson scale as laid down by the Commission, and subject to the various increases, is the scale that the New England carriers are rightfully entitled to.

The Anderson scale applies very largely throughout New England. The witness showed the extent to which for long distances it is held down. This exhibit shows the Anderson scale as distinguished from the local rate; but in the great majority of instances they are identical. The exhibit compares the divisions with the Anderson scale for like distances, and not necessarily the local rate.

Terminal arbitraries are deducted before prorating. Taking Johnsonville as a point of origin, and New York as a point of destination, on first class the Boston & Maine receives 71.2 per cent; on sixth class, 70.8 per cent of the Anderson scale.

From the next point of origin on the Boston & Maine, the percentages range from 49.2 to 78½ per cent. The lines west also get less than their local rates. The percentage ranges from 43.1 per
176 cent to 79.4 per cent. Fitchburg is a representative point on the Boston & Maine. The division of the mileage via Troy is fairly equal between witness' line and the New York Central.

Taking the sixth class rate from Fitchburg to New York, via Troy, the Boston & Maine receives 12.4 cents and the New York Central 11.6 cents. The Boston & Maine receives 60½ per cent of the Anderson scale, and the New York Central 59.5 per cent of its local rate. On sixth class the Boston & Maine receives .6 of a cent more than a mileage prorate.

Taking Boston as a destination, on sixth class, the Boston & Maine receives 1.1 cents less than the mileage prorate, and on first class one cent. To Concord, the Boston & Maine receives 10.7 cents over a mileage prorate, and 2.7 cents on sixth class. To Portland, Maine, on first class, the Boston & Maine receives 1.8 cents in excess, and on sixth class, .05 of a cent in excess.

Sheet 2, taking as the first destination Newark, N. J., shows very much to the advantage of the New England, but it is fair to note that the other lines get only an 8-mile haul out of that, and that is very clearly the explanation of that.

From Concord via Mechanicville to Newark, the Boston &
177 Maine receives 50.2 per cent of the Anderson scale and the lines west get 57.6 of the local rate.

On sixth class the Boston & Maine receives 70.4 per cent of the Anderson scale, and the lines west 54.6 per cent.

Witness cannot explain satisfactorily why sixth class seems to show more favorably than first class. The relationship as between first class and sixth class, in trunk line territory varies. There is no established relationship; while under the Anderson scale, the sixth class is 28 per cent of the first class. Witness thinks that has something to do with it, and reflects this result in some measure.

The class rates in trunk line territory, generally speaking, are lower than the Anderson scale; so that, in many instances, that would be a factor.

From Concord to Newark, via one route, the Boston & Maine gets about 14 cents less than a mileage prorate, and via the other route, about 14 cents more.

To Philadelphia, via the Jersey City route, on first class, the Boston & Maine receives 72 per cent of the Anderson scale, and on sixth class, 98½ per cent. That is a joint haul between the Boston & Maine and the New Haven. On first class that is 4.7 cents
178 over the mileage prorate, and on sixth class 2.2 cents.

Via Mechanicville there are three lines west. The Boston & Maine receives on first class 44.1 per cent of the Anderson scale, and on sixth class, 62.6 per cent. On sixth class the lines west receive 61.1 per cent and on first-class 64 per cent of the local rate.

The Anderson scale does not apply as a local rate between Concord and Mechanicville, because the rate is depressed by the overhead rate to Albany, N. Y. and points immediately west of the river. Traffic men have been more or less constantly at work in an effort to correct that situation, and they are now at work on that.

Witness means that the New England traffic men and the traffic men of the lines west have been jointly at work in an effort to correct that situation.

If the local rate, as it is carried in the tariffs today, was shown on this exhibit under item "K" in place of the Anderson scale, these percentages would change in some instances.

If the Anderson scale were strictly applied in New England, it would require some raising of the rates to Troy and New York, and therefore, the whole base would be somewhat elevated, and there would be some change in the percentages east and west of the gateways.

179 On traffic to Washington, D. C., via Jersey City, on first class, the Boston & Maine receives 61.3 per cent. of the Anderson scale; on sixth class, 95.4. Via Mechanicville, first class, 41.1, and sixth class, 68.2.

Witness cannot justify the disparity between first and sixth class.

On service to Washington the Pennsylvania deducts three cents before prorating, for the Union Railroad. That applies on commodities as well as on classes generally. In that instance, to Washington, the Boston & Maine, by the Jersey City route, receives 5.6 on first class, more than it would get on the mileage prorate, and on sixth class, 2.1. By Mechanicville, it would get 9 cents on first class, and 4.7 cents on sixth class.

To Pittsburgh, the minimum percentage of the Anderson scale is 44.62 and the maximum 65.8. On that traffic the lines west are receiving from 55.2 per cent. to 76.6 per cent. of their local rates.

From Portland to Philadelphia, the New England lines receive, by the Jersey City route, 71.7 per cent. of the Anderson scale, first class; and 89.8 per cent. of the sixth class Anderson scale. The lines west receive 40.4 per cent. of their local rate on first class, and

28.8 per cent. on sixth class. These rates from Portland to
180 Philadelphia cover a large volume of traffic. On first class the Boston & Maine receives 1.2 cents over the mileage prorate, and on sixth class 1 cent. That is a joint haul with the New Haven. The New Haven performs the New York terminal service to the connection of the Pennsylvania Railroad, and for that receives the allowance indicated at the foot of the column. With due consideration for that allowance, the New England lines, in that instance, receive only about a cent in addition to a mileage prorate.

From Baltimore, via the Jersey City route, on first class the New Haven receives 63.6 per cent. of the Anderson scale, and on sixth class, 83.5. The lines west receive, on first class, 44.6 per cent., and on sixth class, 42.8. The New England lines receive, on first class, 2.4, and on sixth class, 1.7 in excess of what the mileage prorate would give them. That is a joint haul in New England between the Boston & Maine and the New Haven. These carriers perform the full service to the west side of New York Harbor.

From Portland to Philadelphia, via Jersey City, there is deducted first from the through rate 31½ cents, the New England terminal of 2 cents, and the steamer Maryland of 4 cents. The balance that is left is prorated on the percentages shown. Then, to the New England proportion thus arrived at is added back the 2 cents and
181 4 cents, which produces the figures shown in item "J."

From Fitchburg to Newark the New England lines receive, on first class, 12.3 cents per hundred pounds less than a mileage prorate, and on sixth class, 4.9 less than a mileage prorate. The lines west, in that instance, get more than their mileage prorate. The haul of the lines west is only 8 miles.

From Fitchburg to Philadelphia, Baltimore, Washington, and Pittsburgh, the New England lines receive from a cent to 10.5 cents above a mileage prorate, averaging around 4 or 5 cents. Boston is a representative point on the Boston & Maine. The traffic from Boston to Newark, Philadelphia, Baltimore, Washington and Pittsburgh is important.

The Boston & Maine receives to these destinations a minimum of 30½ per cent. to a maximum of 87½ per cent. of the Anderson scale. To Pittsburgh it is about one-third of the Anderson scale. To Baltimore, via Mechanicville, it is less than half. To Philadelphia via Mechanicville it is less than half. On that same traffic the lines west receive from 44.1 to 91.1 of their locals.

To Washington, via Mechanicville, the witness' lines receive 31.1 of the Anderson scale, and the lines west get 75.7 of their first-class rate. On sixth class the witness' line receives 49.6, and the
182 lines west 82.7 of their locals. There are four carriers west of the junction point. Via Jersey City, the New England lines on first class receive 49.8 of the Anderson scale; the lines west receive 63.7 of their locals. Two New England carriers participate in that traffic, and one road west of the Hudson River.

This is important traffic, and yet the New England carriers on traffic to Newark are receiving 19.7 cents per hundredweight on first class, and 8.3 cents on sixth class, less than a mileage prorate. Via

Mechanicville they get 1.8, and 0.7 cents on first and sixth class, respectively, in excess of a mileage prorate. To Philadelphia via Jersey City they get 2.0 and 0.8 cents respectively less, and via Mechanicville, 0.1 cents more on first class and just a mileage prorate on sixth. To Baltimore via Jersey City 2.5 and 0.6 less, and via Mechanicville 1.2 and 0.5 more. To Washington via Jersey City 5.4 and 3.1 less, and via Mechanicville 0.1 and 0.1 more.

The route from Boston to Washington via Jersey City is a natural route, and carries a large volume of traffic. It is the most direct route. Two New England carriers participate, and one carrier west of the river. The Pennsylvania Railroad takes 3 cents for the Union Railroad in Baltimore. The New England lines perform the terminal service in New York Harbor, and receive an allowance for that.

On that traffic from Boston to Washington, via the direct route, after all the allowances are made on both sides, New England gets 5.4 cents less than they would if the divisions were actually based on distance, and on sixth class, 3.1 cents less.

To Pittsburgh, via Jersey City, the New England lines receive one-tenth of a cent in excess of a mileage prorate, on both first and sixth classes. Via the Mechanicville route, on first class, four-tenths of a cent under, and on sixth class, one-tenth of a cent under a
183 mileage prorate.

From Boston to Pittsburgh, via Jersey City, on first class, the New England lines receive 2.88 per ton mile, and the lines west earn 2.87. The New England haul is 271 miles, and the haul of the lines west is 436 miles. That is a joint haul for the New England lines, and they perform the New York terminal service. On sixth class, from Boston to Pittsburgh, via this route, the New England earnings per ton per mile are .98 cents, and for the lines west, .97. Via Mechanicville the comparisons are, 2.82 against 2.89 on first class, and .96 against .98 on sixth class.

The mileages on the lines west, as shown on these exhibits, barring any errors that may occur in the process of printing, are the mileages quoted to witness by the lines west, and as their distances from Jersey City or any other New England gateway, to the destinations shown. The mileages on the New England lines are the short line distances from the points of origin to the gateway.

Via the New York Connecting Railroad and Bay Ridge, the witness added to the Harlem River distance 22 miles to Jersey City or Communipaw; through New York Harbor, they add 12 miles, which is understood to be the actual distance from Harlem River to Jersey City.

184 From Johnsonville, N. Y. to Mechanicville, witness' line has a haul of 13 miles. On traffic to Newark, first class, witness' line receives 36½ per cent. of the Anderson scale, on sixth class, 54.8 per cent. On first class witness' line receives 12.4 cents on first class and 5.3 cents on sixth class, in excess of a mileage prorate. In every instance from Johnsonville the Boston & Maine gets a substantial addition to its mileage prorate.

Keene, N. H., is an important point on witness' line. The per-

centage of the Anderson scale received by witness' line ranges from 39.1 per cent. to 106.1 per cent. Compared with the mileage prorate they receive from 4.8 under to 12.1 under, and from 3.8 over to 14 over. Where Washington, D. C. is shown as the destination, the Pennsylvania Railroad deducts the Union Railroad terminal allowance.

From Boston to Harrisburg, via Jersey City, the ton mile earnings are substantially the same, east and west of the river. Via the Mechanicville route the ton mile earning west is slightly greater than the ton mile earning east.

Via the Jersey City route, the Boston & Maine has a haul of 271 miles in connection with the New Haven, and the Pennsylvania has a haul of 188 miles. In the other instance the Boston
185 & Maine has a haul of 187 miles, whereas the lines west have a haul of 333 miles.

Sheet 10 shows four typical destinations in the northern part of the Trunk Line territory. From Concord to those destinations the New England lines receive substantially less than the Anderson scale, and from 2½ cents to 16.5 cents above a mileage prorate.

From Portland, Maine, they receive from 1 cent to 6. 2 cents above a mileage prorate, and in some cases from 1.7 cents to 9 cents below a mileage prorate.

Referring to sheet 11, from Fitchburg witness' lines receive from four-tenths of a cent to 8.9 cents more than the mileage prorate.

From Boston, in a majority of cases, they receive less than a mileage prorate, ranging from one-tenth of a cent to 4.9 cents. From Boston to Pittsburgh, via Rotterdam, the ton mile earnings are 2. 78 cents for the New England lines, and 2.65 cents for the Trunk Lines, on first class. One New England carrier and two Trunk Line carriers participate in the haul.

Referring to sheet 14, from Bellows Falls to Central Freight Association destinations, the New England lines receive from 54.1 to 72.7 of the Anderson scale, and from 3.6 to 21 cents in excess of a mileage prorate.

186 Referring to sheet 15, from Boston and Springfield, the witness' lines receive from 26.9 to 43 per cent. of the Anderson scale.

To Chicago, via the Newport route, the New England lines receive 33.3 per cent., first class, of the Anderson scale, and the lines west get 80 per cent. of their local.

To St. Louis, via Newport, the New England lines receive 32½ per cent. of the Anderson scale, and the lines west receive 83.4 per cent. of the local rate.

From Boston to Indianapolis, via Newport, the New England lines receive 27.4 per cent., first class, and the lines west, 82.5 per cent. of the Anderson scale and the local rate respectively. In that case, there are three carriers west of the river. From Boston to Grand Rapids there are only two lines. The New England lines get 30.7%, the western lines 80%. To Cincinnati the New England lines get 26.9%, the lines west 81.5%. From Springfield the situation is relatively the same.

Via Rotterdam Junction, on traffic to Central Freight Association territory, the New England lines receive from 37 to 45 per cent. of the Anderson scale. For 209 miles, the Anderson scale, first class, is 86 cents.

To Chicago, the local rate west of the river is 1.26, and the lines west receive 99.3 per cent., almost their full local.

Out of the Anderson scale of 86 cents, the New England lines receive 37.7 cents, whereas out of the local rate of 1.26, west
187 of the river, they get 1.25, the lines west.

The Anderson scale, sixth class, is 24 cents, and the New England lines receive 45 per cent. The local rate west of the river, sixth class, is 42 cents, and the lines west receive 99.3 per cent.

Portland shows generally the same situation, except in that instance the percentage obtained by the lines west is more like 85 than 95.

With regard to Concord, the New England lines get substantially 10 per cent. more than one-half of the Anderson scale, and the lines west get around 82 or 83 per cent. of their locals.

From Concord to Chicago, out of an Anderson scale of 86 cents, the New England lines get 49.6, or 57.7 per cent., and out of a local rate west of the river, of 1.26, they get $1.079, or 85.6 per cent.

Referring to sheet No. 17, Greenfield and Haverhill, the situation is substantially the same with some few variations. There is one case, on St. Louis, from Greenfield, where the lines west receive 100.2 per cent. of their local rate.

Sheet 18 shows the route via St. Johns, which is important. From Boston to Central Freight Association destinations the New
188 England lines receive from 33.8 to 54.1 per cent. of the Anderson scale. The lines west get anywhere from 63.4 to 72.10 per cent. of their locals. The haul west to Chicago is 879 miles, and the haul east is 300 miles.

Complainant's Exhibit No. 44 was prepared with a view of showing that the divisions of the transcontinental rates are particularly unfair to the New England lines. The form of the exhibit is substantially the same as that of the previous exhibit, and it indicates the rates and earnings east and west of Chicago, and for New England, on important commodities east bound, and certain lines of traffic west bound.

The first exhibit covers the commodity apples moving from Seattle to Boston at a through rate of $1.66½. The proportion received by the New England lines is 81½ cents per 100 pounds. The proportion received by the New York Central between Chicago and Rotterdam is 33 cents 100 pounds.

The percentage under "W" is incorrectly figured on this exhibit, and witness wants "W" ignored. "V" is correctly figured. It shows that the New England lines receive 2 cents less than they would receive under an actual mileage prorate, and also that the New York Central receives 8¾ cents less than an actual mileage prorate,
189 while the transcontinental lines west of Chicago receive 10.9 cents 100 pounds more than an actual mileage prorate.

The next exhibit shows the same commodity moving to an interior

New England point—to Manchester, New Hampshire, which is typical. In this case the New England lines receive 1.8 cents in excess of an actual mileage prorate. The New York Central, from Chicago to Rotterdam, receives 12.7 cents less than an actual mileage prorate would give it, and the transcontinental lines receive 10.9 more.

The difference in these two exhibits is accounted for by the different basis of divisions to Manchester, New Hampshire, as compared with Boston, in the subdivision of the east of Chicago proportion.

The next page, which is marked sheet 40, indicates that the New England lines receive 3.4 less than an actual mileage prorate; the New York Central 13.4 less, and the transcontinental lines, 10.8 in excess.

Sheet 41 shows that the New England lines receive .5 of a cent in excess of a mileage prorate; the New York Central, 17 cents less; the transcontinental lines, 16.8 cents more than a mileage prorate.

Canned fruits is an important item.

With regard to that commodity, the New England lines
190 receive a cent and a fraction less than a mileage prorate on the movement of the traffic to Boston, the New York Central 5.8 cents less, and the transcontinental lines 7 cents in excess.

The next sheet, No. 43, shows the situation as to an interior New England point, which is similar to the previous exhibit.

On canned salmon moving to Boston, the New England lines receive a cent and a half less than an actual mileage prorate; the New York Central 6 cents, and the lines west of Chicago, 7.6 cents more.

The New England lines get 2 cents per 100 pounds terminal at Manchester, and do not get it at Boston. The two-cent terminal comes in by the use of the Chicago per cents, which are employed in dividing the east of Chicago proportion of the transcontinental through rate. To Boston and intermediate points on the Fitchburg Division beween Rotterdam and Boston, the Boston & Maine does not receive a terminal deduction before prorating; whereas it does to points in the interior, like Manchester, N. H., which is shown in this exhibit.

Witness assumes that these divisions in the Fitchburg Railroad, when they were made, were influenced largely by competition,—competition with the Boston & Albany Railroad. The Boston &
191 Albany, and its divisions, do not receive a terminal deduction. The two lines are parallel, and the only reason that I can give for it is the fact of competition.

Sheet No. 46 shows hides. There is a movement of hides to Boston, but not very extensive. The New England lines receive 2 cents less than an actual mileage prorate; the New York Central Lines 8 cents less, and the transcontinental lines 10 cents more.

Sheet 47 shows that the New England lines receive almost 2 cents less than an actual mileage prorate, while the lines west of Rotterdam receive 12 cents less.

On lemons moving to Boston, the New England lines receive 2 cents and a fraction less than an actual mileage prorate; the New

York Central 8 cents less, and the transcontinental lines 10½ cents more.

There is a movement of lumber from transcontinental territory to New England. To Boston the New England lines receive one cent and four-tenths less than an actual mileage prorate; the New York Central 5½ cents less; and the transcontinental lines, 7 cents more.

On oranges, to Boston, the New England lines receive 2.4 cents less; the New York Central lines 9.7 cents less, and the transcontinental lines, 12 cents more than an actual mileage prorate.

192 There is a large movement of wool from the West to Boston. On wool in the grease to Boston the New England lines receive a little over 2 cents less than a mileage prorate; the New York Central, 8.34 cents less, and the transcontinental lines, 10.9 more than a mileage prorate.

On automobile tires from Boston to the West, the New England lines receive 7.3 cents less; the New York Central, 28.7 cents less, and the transcontinental lines, 36 cents more. Automobile tires are produced at Union Market, Massachusetts, by the Hodd River Rubber Company, which is a large producer. The situation there is that the New England lines receive 6½ cents less than a mileage prorate.

Boots and shoes are produced in the vicinity of Boston, and are shipped from Boston as a distributing point. There is a large movement of boots and shoes from New England to practically all parts of the country. On boots and shoes from Boston the New England lines receive 4.4 cents less than a mileage prorate; the New York Central 17.8 cents less, and the transcontinental lines, 22.3 cents more. From Manchester the New England lines receive 6.6 cents more than an actual mileage prorate; the New York Central, 28.8 cents less, and the transcontinental lines, 22.1 cents more.

193 For rubber boots and shoes the New England lines receive 2 cents less than a mileage prorate; the New York Central 8 cents, and the transcontinental lines 10 cents more.

The next sheet covers the movement of rubber boots and shoes, in carloads, to Seattle. It shows substantially the same information and figures.

There is a very large production of cotton goods in New England, and that commodity moves across the continent. On that the New England lines receive 2.9 cents less than a mileage prorate; the New York Central 11.6 cents less, and the transcontinental lines 14½ cents in excess of a mileage prorate. From Manchester the New England lines receive 8½ cents in excess; the New York Central 9½ cents less, and the transcontinental lines 1 cent in excess of a mileage prorate.

Sheet 64 shows less than carload rates, only. The divisions show 1.6 cents less for the New England lines; 6.4 cents less for the New York Central, and for the transcontinental lines, 8 cents more than a mileage prorate; and from Manchester 19.3 cents more than a mileage prorate for the New England lines; 32.8 cents more for the New York Central, and 52 cents less for the transcontinental lines.

194 Sheet 68 shows dry goods, including woolens and flannels, less-carloads from Boston to Los Angeles; the New England lines receive 17 cents and the New York Central 30.8 cents less than an actual mileage prorate. The transcontinental lines receive 38½ cents more than a mileage prorate. From Manchester, N. H., the New England lines receive 3.3 cents more, the New York Central, 41.8 cents less, and the transcontinental lines 38.4 cents more than a mileage prorate.

On rubber boots and shoes Sheet 77 from Union Market, the New England lines receive 11.8 cents in excess of a mileage prorate; the New York Central, 43.3 cents more, and the transcontinental lines 55 cents less.

The divisions on transcontinental business westbound from Boston give to the line east of Chicago 27½ per cent of the through rate. That is from Boston. From interior points in New England, the line east of Chicago receives its full local rate.

Union Market is on the Fitchburg Division, about 8 miles west of Boston.

From these interior points westbound the carriers east of Chicago get their full rate to Chicago, and the remainder accrues to the lines west of Chicago. The portion accruing east of Chicago is divided on the red line percentages. From Boston the lines east of
195 Chicago get 27½ per cent of the through rate, which is divided between the lines east of Chicago on the same percentages. Eastbound the lines east of Chicago get 25 per cent of the Boston rate, divided on the same percentages.

Page 79 shows that on sewing machines from Boston to Los Angeles the New England carriers receive 4.7 cents less than a mileage prorate; the New York Central receives 18½ cents less, and the transcontinental line 23 cents more. The situation is relatively the same to Seattle, shown on the next sheet. The lines east of Chicago get the full fourth class rate to Chicago.

Orange, Massachusetts, is on the Fitchburg Division, about 80 miles east of Boston. Sewing machines are manufactured there. The New England lines receive 3 cents more than a mileage prorate; the New York Central 26 cents less, and the transcontinental lines, 17.4 cents more, that being an interior point, and the eastern lines getting their local to Chicago, and the lines west the balance. If the through rate were full combination on Chicago, the New England lines getting their full local up to Chicago, they would receive more from interior points; and from Boston substantially the same. There is a heavy movement of fruits from California to Boston.
The movement to Boston is much greater than to interior
196 New England points. That is true of canned salmon and other commodities of that kind.

Sheet 82 shows that on sewing machines from Orange to Seattle the New England lines receive 3 cents more than an actual mileage prorate; the New York Central 20 cents less, and the transcontinental lines 18 cents more.

Witness heard Prof. Cunningham's testimony that the average

investment per unit of traffic was 66 per cent greater in New England as compared with west of the river.

Witness heard Prof. Cunningham's testimony with regard to the average carloading in New England as compared with the average carloading in Trunk Line and Central Freight Association territory; also his testimony about the extent to which the per diem charges, in millions of dollars, are now greater than they would be if they were predicated upon the basis which was in effect when these divisions were established; also heard him say that it is approximately $17,000,000 greater now than it would be if made upon the basis existing when these divisions were established.

Witness heard the testimony of Mr. Brigham to the effect that the freight charges on coal aggregate in the neighborhood of $13,000,000 to the New England roads.

Witness heard Prof. Cunningham's testimony that the net revenue per ton per mile for the period shown in his exhibit was
197 a deficit of thirty-six hundredths of a mill, as compared with plus thirty-two hundredths of a mill, on the average, for the lines west of the Hudson River.

Asked whether, in the light of all these circumstances, he regarded the devisions received by the New England road, as a whole, on traffic between points on the Boston & Maine to New York, Philadelphia, Baltimore and Washington, as fair and reasonable to the New England Railroads, and fairly reflecting the relative service performed by them, the witness answered: "I do not think they are fair."

Asked what was his answer with regard to the rates between points on witness' line in New England and points in Trunk Line and Central Freight Association territory, the witness answered: "I think they are unfair, based on that testimony you mentioned."

Asked what, in his judgment, is the matter, if anything is the matter, with the transcontinental divisions, are they fair to the New England Railroads, the witness answered: "I do not think they are fair to the lines in New England or to Chicago."

Asked, "Why do you say that?" the witness answered: "Measured by the only measure we have had heretofore—which is mileage—it shows that the line east of Chicago receives very much less
198 than an actual mileage prorate would give it."

Based on mileage these divisions are unfair. Based on mileage, these divisions are unfair to the lines east of Chicago.

Cross-examination:

Witness has no statistics as to the important tonnage centers on the Boston & Maine, from the point of view of origination and receipt of traffic, but can give his own general knowledge of it.

Asked whether he could name the 30 most important points of origin and destination of traffic on his road, with some reasonable degree of accuracy, stating the order in which they should be placed, the witness answered:

281

"I would not be able to state, offhand, the order in which they should be placed. I think we can give you the 30 most important points on the Boston & Maine."

Witness has no statistical data which would confirm his views.

On interchange traffic the car loading is the same for the New England lines as for the Trunk Lines. So that the differences which exist in that respect have to do with the local tonnage in the different territories.

Asked: "What is your plan or suggestion as to the way
199 you think these existing divisions should be modified so as to meet your views?" the witness said: "I think the entire division structure should be rebuilt. That is a tremendous task, and my idea would be that a temporary adjustment be made by the use of an arbitrary, even though there are objections to that; then the arbitrary, being a tentative proposition, be allowed to remain in effect for a given period, and during that period there should be negotiations as between the lines interested, to work out some simplified form of percentages that would produce the increase in money that ought to come to the New England carriers."

Asked whether he had in his own mind any idea of what should be the plan for the permanent arrangement, witness answered:

"Yes—well, I have not exactly formed a plan. I have this suggestion to make: I think the exhibits that have been introduced here show the inconsistency of this division structure. The maps, the blocking and colors on the maps, very clearly indicate the inconsistency of the blocking. It is not arranged according to the distances as you move east from the junction points. The amount of revenue received by the Boston & Maine Railroad up to the various junctions where the distance is the same, varies, and varies materially. The whole thing is merely a mess of incon-
200 sistencies.

"Now, it seems to me that we have got to come to some simplified basis, and, while we cannot throw away the foundation which we have here, it does seem to me that this foundation should be used in this way: That road-to-road per cents is the only proposition to employ in this revision. The road-to-road per cents would, of course, be based on the revenue which is derived from the use of these existing percentages. Then, after you get your simplified plan, it is very easy to raise or reduce the New England per cents as a whole, according to New England's needs.

"Now, that is the only plan I can think of that would work out. I cannot see that there are any objections to that on the ground that the character of the traffic is liable to change, because, if New England is treated as a whole, the traffic probably will not change—will not change so as materially to affect the percentages to any great extent.

"Let me illustrate. There are many lines and routes leading into New England. We will take the Wabash, the Nickel Plate, the West Shore and the Boston & Maine. The revenue for a given

period—say a year—can be gathered just as it was under
201 Federal control, and the revenue accruing to each carrier in that line cast into per cents. That is a road-to-road per cent. That per cent would apply on all business originating or terminating on the Wabash, interchanged with the Boston & Maine at any point on its road.

"Now, I know there are objections to that plan; but it seems to me, when we are dealing with New England as a whole here, that the objections to that plan do not amount to very much."

Witness does not think the competitive situation would be very serious if that were the plan.

Asked whether that suggestion is rested on the theory, finally, that the needs of New England ought to be looked after through that method, the witness said:

"Sure. New England needs the money, and needs it quick."

Asked whether he would concede the same thing to any other normal group of roads, the witness said:

"I do not see any reason why not. I think that before we get through with it the whole country is coming down to a simplified basis."

Asked whether he had formed any idea of what should be the temporary soluton, the witness said:

"Some arbitrary basis. We have suggested a basis of
202 arbitraries—35 cents a ton, 50 cents a ton and $1.10 a ton; 35 cents to be applied to coal, 50 cents a ton to low grade commodities like brick, stone, and that sort of thing, and $1.10 a ton on the balance of the traffic, merely as a temporary proposition."

Witness understands that there are imperfections in this plan. As the whole thing would be tentative, there might be a minimum charge per ton to accrue as revenue to the lines west of the Hudson River.

As a temporary proposition, it will be appropriate, even though the temporary adjustment meant a connecting carrier were not able to earn its fixed charges.

Asked whether he thought the needs of New England should outweigh the needs of the connections, the witness said:

"In all fairness perhaps they should not; and there might be isolated cases, as you mention,—but I think they would be so small that they would have little effect on the whole."

Witness' exhibits have not shown local rates from the points that he has given to the junction points, and those local rates were not examined and considered in connection with the preparation of the exhibits.

It would not be a very difficult task to insert just above the so-called Anderson scale figures, the local rates in at least one
203 or two cases, so that they could be compared.

The local rate never exceeds the Anderson scale.

The division via Mechanicville is entirely different from that via Jersey City. The Jersey City, Maybrook and Mechanicville routes are competitive.

The witness, for the Boston & Maine as an originating carrier,

would route the traffic out of New England via the long route. The policy of the New England carriers is to obtain the long route, regardless of what the line west of the Hudson River might receive.

Asked whether there is not a certain part of the traffic on which the divisions are made the same via the different gateways, since otherwise there would be a movement via the gateway that profited either the east or west more than the other, the witness said:

"No, sir. The only inequality is as to Rotterdam and Mechanicville. That is true particularly to Central Freight Association territory."

Although not including the Boston & Albany as a complainant, witness thinks that the divisions accorded in this proceeding to the New England lines should also be accorded to the Boston & Albany road, "because, if not, you are creating a competitive situation which you haven't today."

204 In other words, the traffic would go into New England via the Boston & Albany gateway. The New York Central would turn its traffic for Boston, Worcester and Springfield over to the Boston & Albany Railroad, instead of to the Boston & Maine. It would be to its interest to do so.

Divisions are so adjusted today that the traffic is not more attractive to one route than another, as to divisions. It may be on traffic moving into New England. Take the Pennsylvania, for instance. I won't move its traffic to Wilkes-Barre and turn it over to the Boston & Maine, when they can haul it to Jersey City. That is because the Pennsylvania earns more to Jersey City than to Wilkes-Barre.

Traffic originating on the Boston & Maine is given to the Delaware & Hudson in preference to the New Haven.

Recess.

GEORGE H. EATON resumed the stand.

Further cross-examination:

The junctions of the Boston & Maine with the Boston & Albany are at Worcester and at Springfield.

Complainants' Exhibit No. 10, offered by Br. Brigham, showing tonnage interchanged between the Boston & Maine Railroad and the New York Central, including the Boston & Albany, in-

205 cludes tonnage delivered to the Boston & Albany at Worcester and Springfield, and to the New York Cenral at Rotterdam.

Witness does not think that this tonnage includes any tonnage that originates or terminates on the Boston & Albany Railroad, but is tonnage that goes over the Boston & Albany Railroad to the Trunk Lines, but simply assumes that that is the case.

Witness has no data about the distribution of this interchanged tonnage, having regard to the classes of commodities and the localities to which the principal tonnage goes, and from which it comes.

Redirect examination:

Asked from the point of view of determining what is a fair division for the New England railroads on this traffic, what he thinks is the better base or the fairer criterion, the depressed rates that are held down by reason of the overhead rates to points on the lines of these defendant railroads, or the full measure of the Anderson scale, the witness said:

"Why, the full measure of the Anderson scale."

Witness says this because the Anderson scale was laid down by the Commission as the proper scale for New England, and they are entitled to the full measure of that scale, and they would
206 have it if they could get these Trunk Line rates raised, but they cannot. They have not been able to up to this time. The defendants in this case are almost entirely responsible for the existing situation in that respect.

Recross-examination:

When witness said "responsible," he meant that the class rate scale in Trunk Line territory is anything but consistent. The increase necessary in these rates from New England to Trunk Line territory is going to mean a revision of the rates within Trunk Line territory, both up and down. That is what ought to be done. They ought to get a consistent scale in Trunk Line territory. That goes along with this increase from New England to Trunk Line territory. The reason they have not been able to bring this about is because of this situation in the Trunk Line territory.

Witness does not say that the Trunk Lines have not expressed a willingness to cooperate, but they have not got anywhere. The through rates that are now holding down the Anderson scale are now too low, in witness' judgment. They have got to go up in order to give New England carriers the full measure of the Anderson scale, by which they make their comparison. There is a logical
207 and consistent rate structure, generally speaking, in Central Freight Association territory. There is a logical and consistent rate structure in New England, generally speaking, except where it is depressed by rates to points on the lines of the defendants. There is absolutely not a logical and consistent rate structure in Trunk Line territory. That fact embarrasses the New England lines very much in maintaining a logical and consistent rate structure in their own territory. This statement refers to class rates. They have a good many commodity rates in New England, just the same as there are a good many in Trunk Line territory. In some cases they are not consistent and logical rates in either territory.

It is not witness' opinion that the rates between the New England and Trunk Line territory should be a full combination of the locals.

Witness does not claim that in the division of the joint through rates New England should have necessarily the full measure of the Anderson scale, as its proportion, but he contends that they should have a much greater percentage of the Anderson scale than they receive today.

Witness would not be satisfied with a prorate division on the basis of the same percentage of the Anderson scale which the other lines receive as to their locals.

208 Asked by Chairman Clark whether it was not true that "This whole system of divisions of rates that is attacked in this proceeding has grown up by what I may term trading between the carriers parties to the rates, each having special consideration for its own interests, and each getting for itself the best trade that it could get with its connections, in order to establish the rates and open the routes," witness said, "Yes, sir. The divisions are based almost entirely on trade, with mileage as a basis. Substantially no consideration has been given to cost, except in the very small measure of the terminal deduction, which is allowed the New England roads. Apparently, when these divisions were made, cost was not taken into consideration, the cost of service." These divisions were all predicated upon mileage, but the witness does not mean the actual mileage haul performed by the different railroads. Sometimes it is constructive mileage, what you might call a fictitious or constructive mileage. Asked whether it was not true that in making up these various rates and routes, and agreeing upon the divisions of them, competition of railroads and of markets has had a very marked effect, witness replied, "I have no doubt of it. * * * These divisions were made many years ago, and I must assume that that was the case." The entire structure ought to be revised. That would be an enormous task. It would take months, if not, perhaps, a year or two years. Witness thinks it could be done more expe-

209 ditiously by the railroads and the Commission together, in cooperation, because the railroads in many cases will never be able to agree. If the railroads were to take up a revision of this structure among themselves, they would be at liberty to give and take, in consideration of their various competitive conditions.

The same basis that fixed the divisions via one gateway should be adopted, witness believes, as the basis via all gateways. It is not necessary that the Boston & Maine should receive the same division out of all rates, where its haul was the same. They would not expect the same rate per 100 pounds as a proportion of the through rate to C. F. A. territory as they receive to Trunk Line territory, where the rate is much less and the distance is much less. The eastbound transcontinental rates apply to practically all of New England. Any change in the division of the transcontinental rates must be made, first, by changing the divisions east and west of Chicago, from Chicago junctions. First, there must be a basis fixed as between the western lines and the eastern lines. Having done that, the next step would be a fair division as between the lines west of the Hudson River and the New England lines. In other words, the same consideration would be given to the divisions of the east of

210 Chicago proportion of the transcontinental rate, as is given to the division of the Chicago local rate. Witness would not give the lines between Chicago and the Hudson River the same division of that traffic, regardless of destination. It would make a difference whether the traffic terminated on the Trunk Lines or

whether it passed over the Trunk Lines as a bridge. Assuming that there had been a division made at Chicago junctions, witness would not divide the portion accruing to the lines east of Chicago in such a way as to give the trunk lines up to the Hudson River the same division, regardless of destination in New England.

Witness thinks a fair basis of division, applied to the east of Chicago portion of the transcontinental rate, would be the division that is fixed by the Chicago local traffic. That division would vary for the trunk lines, according to the destination of the traffic. If the divisions east and west of Chicago junctions were fixed by the Commission, the portions accruing east of the Chicago junctions should be divided on present per cents applying to the local traffic. If any change in the Chicago local per cents is brought about, that change would apply to the east of Chicago proportion of the transcontinental rate.

The better way would be to establish some temporary arrangement which would afford the New England lines some relief, and
211 then have the carriers take up this revision, which is an enormous task.

Witness does not know whether the Commission, acting within the limits of its delegated power, has any power to lay down such a temporary rule. The only standard that witness has in mind is what he has already mentioned, namely, the road-to-road per cent plan, similar to that in force during Federal control.

E. J. PEARSON, called as a witness by the complainants, testified:

That he is president of the New York, New Haven & Hartford Railroad, and first vice-president of the Central New England. He has been president of the New Haven about 4½ years; about a year as vice-president and assistant to the president; a short time as president, nearly a year; then, as Federal manager, and president since the termination of Federal control.

Prior to becoming connected with the New Haven he was, for about one year prior, first vice-president in charge of the Texas & Pacific Railroad. 4 preceding years as first vice-president of the Missouri Pacific Iron Mountain System. 5 preceding years as chief engineer building the transcontinental extension of the Chi-
212 cago, Milwaukee & St. Paul Road. Something over 20 years preceding on the Northern Pacific, last as chief engineer; prior to that, in charge of the department of transportation; prior to that, as general superintendent; prior to that, as superintendent of various divisions. His whole experience in railroading covers between 38 and 39 years.

On the Northern Pacific, in various positions, the witness was identified quite largely with the revision of the road and the remodeling and improvement of the operations. He found a similar problem on the Missouri Pacific, and a somewhat similar problem on the Texas & Pacific.

Approaching the New Haven problem, with which witness was more or less familiar before, he was confronted with the necessity

for a similar endeavor. He has been studying this problem, and will endeavor to speak on it, not only from the standpont of the New Haven Road, but from the standpoint of the public of southern New England. It is a public question. The two are closely interwoven, and what is a proper remedy—if such term may be used—he believes would be to the mutual advantage of the public as well as the road.

It is his purpose to present evidence as to the disproportionate needs of the New Haven System, one of the New England lines, in regard to which the desirability was stated by the Com-
213 mission in Ex Parte 74, that carriers give careful consideration to the division of joint rates accruing to the New England lines.

Important among the matters to be presented are the effect of changes occurring subsequent to the establishment of the divisions, most of them many years ago. The serious losses arising because of the rapidly expanding increases in costs by applying wage awards to the larger number of employees required to perform the character of service, with slower results from rate advances on the smaller number of traffic units; a somewhat corresponding effect from other items of operating costs; the conditions and circumstances directly incident to the losses on intertrunk line freight justifying an increase in the divisions; the solution of the transportation problem of southern New England and the very serious present situation of these roads.

The New Haven System, as compared to other railways which intersect and compete quite lrgely within territories they serve, is in the unusual position of serving almost exclusively the States of Connecicut, Rhode Island, and southern and southeastern Massachusetts, with a population approximating 3,400,000, or 3¼ per cent of the total of the United States. Without other intersect-
214 ing and competing lines, the New Haven must meet the requirements of its territory for transportation in such quantity and quality that operation of its unified system will mutually benefit both the public and the road. While actual determination is impossible, it is probable the territory is served by less mileage and at a smaller valuation than would be the case if there were other competing roads, possibly duplicating and intersecting the present system.

Witness refers to this situation not to indicate any disadvantage of the New Haven Road, but to indicate the obligation that it is under. The New Haven System was a consolidation of a number of small roads in years past, and while the comment on it at the time may have been from a different point of view, it may now be leading in the direction of consolidations contemplated by the Transportation Act.

The New Haven's responsibility is not only local to its territory, but also in the participation jointly with all other carriers connecting at its gateways, in furnishing the terminal service on interline traffic to and from all other portions of the country. The terminal character of its service is evidenced by the fact that approximately

93 per cent. of the cars received from connections are for destinations on its rails.

215 While the United States has expanded from the original settlements in the East, the highly developed industrial section served by the New Haven continues to be a most important part of the nation. All sections are marketing in, and the many railroads are transporting to New Haven territory, approximately 600,000 carloads of freight per annum, comprising foodstuffs, feed, fuel, raw materials, building materials, and supplies of every character. Its shipments of manufactured products outbound to all sections, aggregate in tonnage about 20 per cent. of the inbound. All portions of the nation enjoying such commercial relations and the systems of transportation by which they are connected and served, are essentially interdependent and necessary one to the other.

In its endeavor to expand capacity and improve service, coincidentally with the growing demand of traffic, the New Haven during the past seven years has so devoted all the funds it could earn, borrow, or obtain from the sale of non-carrier properties, and has made for the purpose, a total capital expenditure aggregating $49,276,715, during the seven years from June 30, 1913, up to the close of December 19, 1920. The actual figures for this December and the preceding month have been estimated, but the estimate, compared with the total, is trivial.

216 Since September 30, 1913, no dividends have been paid; but, if they had been paid, at a rate of 6 per cent., it would have aggregated approximately $66,000,000.

During the period of commercial activity and rapid industrial growth from 1915 to 1919, while transportation was not furnished at all times with the perfection desired, nevertheless an increase during the four years of approximately 960,000,000 net ton miles or 35 per cent., and 538,029,988 passengers one mile, or 36.0 per cent was transported. The growing demands of the territory were met in the aggregate. Commerce and industry prospered. The confidence of the public that the New Haven would continue to serve its requirements was reflected in part at least by the after-the-war construction which was under way during 1919, of some 132 new manufacturing plants, which includes a number of large extensions—all substantial in capacity and size.

These figures result from a survey of their property late in 1919, with a view of determining whether or not industry was expanding, and they found, as an after-the-war proposition, that this number of large and new industries or extensions was under way. This does not include smaller items, which would be insignificant for the purpose.

217 As a result of the additions and betterments to the road and attention to operating efficiency and economy by all engaged in the service, the increase of 35 per cent. representing approximately 960,000,000 net ton miles, was moved with a decrease of 434,175 freight train miles, or 5.8 per cent.; the increase of

36.0 per cent, representing 538,029,988 passengers one mile, with a decrease of 1,198,096 passenger train miles, or 7.5 per cent.; and there were further features of operating improvement. The Transportation Department for the past several years has been operated with constantly decreasing number of man hours, notwithstanding this increase in traffic.

There were increased during 1916 and 1917, certain unduly low and unremunerative rates of the character referred to by Interstate Commerce Commissioner Anderson (9953, April 16, 1918, page 462) established in the past to meet conditions that obtained at the time of their inception, for which there was no justification for maintaining on account of change in conditions, resulting in annual revenues irrespective of those awarded by the Interstate Commerce Commission and the U. S. Railroad Administration, aggregating approximately $1,580,000.

The benefits and the results are submerged. If, however, the improvements in operation and the increases in transportation capacity had not been effected, the service rendered would
218 have been inadequate and the results disastrous to the country.

The witness thinks that the Chairman can realize what the situation would have been if they had continued along on the basis they were a number of years ago, and how it would have affected commerce and industry. The further question then arises as to why the New Haven does not indicate prospects of benefits under the Transportation Act, at least equal to those of other railroads carrying the same combination of rate increases, wage increases established by Federal authorities, the present level of prices for labor, fuel and materials, and what, if any, are the greater burdens under which the New Haven may be placed. Analysis indicates there are several.

Important among them are: the increased transportation cost on fuel; the different ratio of freight to passenger revenues on which rate advances apply; and the relatively larger number of employes, all of whom are subject to the wage awards, but who at the same time produce a smaller number of traffic units because of the character of the service performed.

Because of the distance from the sources of fuel supply, the cost to the New Haven of transportation over foreign lines for bringing its fuel to its gateways has always been a large item. There-
219 after the New Haven must then incur the further expense of distribution on its system which is comparable to the cost of distribution on railroads so located that their fuel is received with little or no cost for transportation to them by other carriers. The increase in charges paid by the New Haven to other carriers for transporting its fuel because only of the raises in rates, not to mention similar increases in cost of transporting its other materials and supplies, is approximately $3,050,000 per annum. Connections more favorably located are not under this item of cost and particularly not under the additional expense on account of rate increases.

Moreover, they benefit from the traffic in fuel which they commercially handle for the New Haven.

Rate advances have been more liberal on freight than on passenger. Trunk line revenues average about ¾ freight, ¼ passenger. If the New Haven could have enjoyed the trunk line proportion between freight and passenger revenues, the increased revenues to the New Haven since 1917 would have approximated $7,300,000 per annum.

That requires some explanation, because, in turn, if you should increase the volume of freight up to 75 per cent., under the present circumstances and present rates, it would not produce this result.

220 But, if it should be increased, and should be the same character of longer haul, heavier train traffic as on the trunk lines, on that basis, that would be the result.

Ratios showing total expenses to total revenues, freight expenses to freight revenues, and passenger expenses to passenger revenues, taxes, fixed charges, and all other items not being considered, indicate for several years that the results from freight have been less favorable than from passenger. In July, 1916, the percentages were: total, 61.1, freight 64.3, passenger 55.4. The facts show various intervening changes incidental to volume of traffic, wage awards, rate awards, weather adversity, etc., and the results for October, 1920, in ratios of 90.55 for total, 94.54 for freight, and 85.09 for passenger. While the trend of the ratios has been upward, the record shows that passenger service has been consistently more self-supporting than freight; that on the present basis the results from passenger, while more satisfactory, are apparently insufficient to carry its proper proportion of the charges; and on the other hand, that freight has become practically non-supporting, in other words, the cost of freight operation is close to its revenues.

In July, 1916, the New Haven commenced a separation which was

221 pretty close to the formula now established by the Interstate Commerce Commission. When modified to conform to the formula of the Interstate Commerce Commission, the change in results was slight. During 1918 there were 8 months in which no separation was made. It shows the passenger ratio below the freight consistently, and below 100 per cent, except during February, 1920. It shows that freight has fluctuated largely, and, in many instances, the freight ratio is considerably above 100. The figures for September and October are reasonably indicative of the extent of two months' results, as to what is happening under the present combination of rates, wages, and other expenses. The large fluctuations in the diagram are incidental to back pay, particularly adverse weather, or features of that kind.

Witness recalls frequently the remarks of Mr. Loree before an informal hearing here in this room, and when he realizes the large amount of that traffic that has been handled at a cost which exceeds revenues, he questions whether the position advanced, that it would be better for the New England railroads to go into a receivership than to compensate them, can fairly reflect what should be done.

New Haven freight service differs widely in general from that performed in other territories. Obviously its cost is much higher,
222 per traffic unit handled. Adjoining the seaboard and without rail connections beyond, there is but little through traffic to bridge. There are no mines, saw mills, large steel mills that perform their own switching, ports of reforwarding or export, or elevators, which produce or receive large tonnage of freight that can be generally handled in through tonnage trains. There is not much of its traffic that can be received or disposed of in lots of a considerable number of cars each, or be handled to or from such less expensive sidings as customarily serve territories producing raw materials and products of the farm, forest and mine. Such traffic improves the statistics and averages the costs downward. The New Haven on the contrary, in furnishing its part of the joint service incidental to the delivery of the large volume of freight from all the producing areas of the country, which is marketed within its territory, and which is distributive in character, is confronted with a different situation. Its hauls average shorter; junctions and yards are frequent. The cost for freight station and transfer platform operation is relatively very large. The greater part of the cars must be individually placed and picked up by switching crews or road locals. The facilities used are generally more expensive. It exclusively serves ten cities with populations from 50,000 to 237,000.

223 This situation requires a large increase in the number of employes and in power used, on the basis of ton mile comparisons. The disparity in greater number of employes required, all under the wage standardizations and awards, and the lesser number of units of traffic on which rate advances are received, is indicated by the following:

The tabulation following is from Prof. Cunningham's exhibit. First is the class of service, second, the figures for the New Haven and C. N. E.; third, the figures for the trunk lines; and fourth, remarks. It shows an average haul per ton for the New Haven of 104.87; trunk line, 153.4. Average net tons per train mile, 559 for the New Haven; trunk line, 857. The New Haven per cent is 65.2 that of the trunk line. The next item is freight station costs per thousand net ton miles. The only trunk lines involved in this comparison are the B. & O., the Erie, and the P. R. R. The New Haven shows a figure of $1.97; trunk line, 45 cents. Figuring the trunk line as 100, the New Haven per cent would be 337.8.

The next item is yard expense per thousand net ton miles. New Haven, $1.712; Trunk Lines, $.961. On the basis of 100 per cent for trunk line, this represents 178.1 per cent for the New Haven.

The next is freight train wages per 1,000 ton miles. New
224 Haven, $1.231; trunk lines, $.674, the relation in per cents being 100 per cent for trunk line, and 182.6 per cent for the New Haven.

The next item is total freight train expenses, per 1,000 net ton miles. New Haven, $3.555; trunk lines, $2.161. Calling the trunk lines 100 per cent, the New Haven per cent is 164.5.

By reason of the above, the payroll increases, not on the total

number of employes but only on the increased number of employes for handling a corresponding number of ton miles, is at least $9,000,000 per annum.

The amount of these three items only, under which the New Haven suffers more greatly than the majority of roads, in performing its portion of the transportation of the nation, is:

Increased cost on transportation of fuel, $3,050,000. Less revenues, because of character of traffic, $7,300,000. Wage increase to excess employes in freight service, $9,000,000. Total $19,350,000.

The following, which does not include various smaller divisions, indicates in general the long period of time during which the general basis of divisions has been in effect. The greater part were established prior to subsequent occurrences of a national or federal
225 character which are responsible for some of the present disadvantages of the New Haven and for lowering its basis of equality with its connections as compared to previously existing conditions.

To and from Trunk Line territory, Pennsylvania, 40 years. That is the period of time since they were established. The date of that was March, 1880.

To and from Trunk Line Territory.

Road.	Date.	No. of years to date.
P. R. R.	March 1880	40 years
P. & R.-C. N. J.	Jan. 1887	33 years
L. V.	Apr. 1887	33 "
B. & O. via P. & R.-C. N. J.	Apr. 1895	25 "
Erie R. R.	Feb. 1896	24 "
West Shore	Aug. 1896	24 "
D. L. & W.	Mar. 1902	18 "
N. Y. C. via B. & A.	Mar. 1903	17 "

To and from Central Frt. Territory (So-called Fast Frt. Line Traffic).

Road.	Date.	No. of years to date.
Star Union Line	Dec. 1887	23 years
N. Y. C. Fast Frt. Lines	Revised 1906	14 "
Central States Despatch	Feb. 1898	22 "
Ont. Central Desp. (N. Y. O. & W.)	July 1906	14 "
226 Erie Fast Frt. Lines	Revised June 1906	14 years

(Not much change from original divisions 25 years ago.)

D. L. & W. Fast Frt. Lines	Original	Over 25 years
Lehigh Valley Fast Frt. Lines	1888	32 years

While there may have been differences in the cost of operation on the New Haven in comparison with its connections during the past,

these were apparently considered when years ago, the present bases of divisions were established. Subsequently, however, certain changes have occurred. They were incident to common action by all railroads, extension of standardization of wages, and the operation of Federal control and the Transportation Acts, in all of which the New Haven participated. They have affected the New Haven more adversely than its connections. It is now costing the New Haven relatively more than formerly to perform its portion of the joint service with its connections. The New Haven therefore is not receiving its proper proportion of the revenues from the joint traffic as a whole and in consequence is no longer on a proper basis of equality with its connections.

Prior to July 1, 1902, the use of foreign cars was paid for on a mileage basis. With an average movement of 15 miles today—which is not far from the record for a good many years on the
227 New Haven territory—the cost at 6 mills per mile was 9 cents per car day. At 2 cents per mile which would approximate the present day basis, it would have approximated 30 cents per car day. Present cost is on the per diem basis of $1 per car day. As an example of what these figures mean, 24,500 cars per day on mileage, which basis was in effect during the period when the majority of the divisions were established, would have represented a cost at the 2-cent rate to the New Haven of $2,682,750 per year, but at the present time on per diem, $8,942,500, a difference of $6,259,750. The New Haven met the situation when per diem was established by the liberal purchase of cars. It was a creditor road up to and including 1915, and for seven months in 1919, but the additional investment in cars and cost of their maintenance represented largely a burden not carried when the divisions were established. It is now handling its interline traffic which in ton miles is approximately 80 per cent of its total, in cars representing an expense of substantially $1 per day, as compared to about 30 cents per day if the mileage basis when most of the divisions were made, had still been in effect.

In submitting these figures, it is not the purpose of the witness to intimate that they should be short of cars, or that they should
228 return to mileage. The figures are simply illustrative to show how the cost to the New Haven has increased as a result of the establishment of per diem, and as a result of the liberal purchase of cars, compared to what it was years ago. The number of cars assumed, 24,500, is roughly 70 per cent of the cars owned by the New Haven Railroad.

In a general way witness would say that there has been no change in the balancing of the movement since divisions were established, because the conditions under which these various products come into New England, to the best of witness' knowledge, were quite largely, when they were established, as they are today.

Roads furnishing terminal service in destination territory, such as those in southern New England, are at a marked disadvantage with respect to the ownership of cars. This is because when there is a car shortage, connecting lines will take New Haven equipment

freely, but when there is a surplusage, home equipment soon gathers on home rails. The traffic continues to come, but in foreigns. This necessitates per diem payments by the New Haven which increase under these circumstances, an added burden, notwithstanding its equipment standing idle at home.

We are going through a period of car surplusage at the present time, and the New Haven now has something over 2,000 foreigns on its rails, the disposition of which is being delayed. All of those cars came into the eastern territory under load, moving under a tariff. They had to receive the load and had to receive the cars. They are unloaded, and now they are under this delay and difficulty of getting them back to their connections, getting them to accept them and get them headed back home.

The approximate relations of freight ton miles handled are: Inter Trunk Line 80.4 per cent, Inter New England, 7.1 per cent, local 12.5 per cent, total 100.00 per cent.

Based on the actual averages per ton mile during 11 months ending May 31, 1919—and they took those 11 months because they are the last part of a year on which they had actual figures—there are some comparisons which witness desires to offer. Formerly the accounting department kept the statistics of the three classes of traffic, but at that time the figuring of mileage, etc., from waybills was discontinued and subsequently the data is from the conductor's wheel reports, which do not give the same detail. Based on these actual averages, the present average revenues per ton mile approximate:

From inter trunk line	$.01537
From Intra New England	.04197
From Local	$.06124

Witness should add that these averages have been adjusted to include the increases granted under I. C. C. Ex Parte 74, so that they are the best approximation, and a close one, of that data today. The figures show a revenue of a cent and a half per ton mile from inter trunk line; slightly over 4 cents from intra New England traffic; and slightly over 6 cents for local traffic.

It is recognized that the character of traffic and length of haul are partial causes of the high local average.

The service of the New Haven during the past several years has not been at all times satisfactory to the public or to its officers. The management has striven diligently not only to increase the capacity of its transportation plant concurrently with the growth of the traffic but to operate it efficiently and to meet the demands of the public. While it has succeeded in the aggregate, and while there has been no general control of traffic since the middle of September, it does not have capacity to currently handle the larger volumes of traffic incidental to unusual movements in commercial activity. Neither is it sufficiently equipped under the demands of the greater traffic that has developed during recent years, to give the high character of service in all instances, which the public desires and which the road wishes to furnish.

Much traffic is moving by motor truck. Probably such handling of the short hauls may now be the economic method but this is not true with respect to the longer hauls. It is the desire of the management to so improve its service that the longer motor hauls may not be necessary, in order to secure prompt delivery and that commerce may have dependable rail service wherever the same is less expensive. It is the further desire of the management to continue to expand capacity, coincidentally with the demands of the public. The foundation and the framework of the system is not only substantial but generally sufficient and good. There are, however, some essentials although greatly improved, that are not yet quite sufficient. The more important relate to interior freight terminals; engine terminals including the facilities for the making of inspection, light, and running repairs to locomotives in service; some short stretches of additional main tracks where there is specially heavy frequency of train movement; and of block signalling. These further improvements will not enable a corresponding extension of the unusually favorable statistics in operating results heretofore, but if carried along with prudence and care they will increasingly better
232 the service and more than repay the additional charges, and largely meet the wishes and requirements of the public.

The road has practically exhausted its resources in the securing of further funds for these purposes, except its credit may be rehabilitated.

The record of the New York, New Haven and Hartford Railroad during the past twenty years, as to surplus for dividends and dividends paid is certainly interesting.

Commencing with the year ending June 30th, 1900, down to and including 1912, the dividend rate was 8 per cent; in 1913, the dividend rate was 7½ per cent; 1914, 1½ per cent. In 1915 no dividend was declared, but the surplus available was $2,307,000. In 1916, it was $4,315,756.86. For the six months ending December 31st 1916, it was $4,546,090.05. For the year ending December 31st, 1917, it was $2,404,095.44.

No dividend was paid during 1917, or after the payment of one and one-half per cent in 1914. The money went back into the property, largely. After that the situation changed and the figures given for 1918 and 1919 are Federal and corporate combined, eliminating the standard return, which makes the figures comparable with previous years. The figure for 1920 is 10 months actual and
233 2 months estimated, with the guarantee and standard return eliminated. For the year ending December 31, 1918, there was a deficit of $7,283,353.98. In 1919 the deficit was $7,924,007.63. In 1920 the deficit was $25,600,000.

With such a record, the question may be asked why this application for increased divisions has not been made earlier. In answer, it may be stated that the road first assumed its obligation to increase capacity. Four years ago, if they had asked for increases, the feeling would have been naturally that it was not increases, but that it was capacity in railroading that should be the remedy.

The road first assumed its obligation to increase capacity, to make its record in efficient operation—and witness has referred heretofore to the results in the way of increased traffic units handled, decrease in train miles, and the constant increase in man hours, which witness thinks is in a way impressive, and which he does not believe can be equalled by very many railroads during the same period of time;—to secure information which is now preliminarily at hand, concerning its valuation; to work out the conditions that became operative during Federal control; in other words, to do the best they could to strike a balance and get the machine working in the best possible manner under a new situation; and when taking action in the matter, to do so in conformity with such legislation as
234 would control after Federal operation. Promptly after the provisions of the Transportation Act were established, the matter of divisions was opened with connecting roads. They moved as promptly as possible after the terms of the Transportation Act became known.

The valuation on which divisions are asked to produce 6 per cent is much below the total now indicated by the preliminary reports of the Bureau of Valuation. The New Haven's excess of valuation over property investment account is something in excess of $120,000,000.

Turning to the testimony of Mr. Hulme before the Interstate Commerce Commission, in Ex Parte 74, in the Matter of the Application of Carriers in Official, Southern, and Western Territories for Authority to Increase Rates, dated Washington, May 26th and 27th, 1920, witness finds these figures, and his understanding of their own records is the same. Under cost new and land, witness finds these figures:

Central New England, $17,394,774; Hartford, Connecticut Western, which operates a part of the Central New England, $5,707,093; New Haven, $319,599,003. Under the heading "Investment in Road and Equipment:" Central New England, $22,342,396; Hartford, Connecticut Western, $4,386,613; New Haven, $195,-
235 505,844. The first set totals $342,700,890; the second, $222,-234,813, the difference between $120,466,077.

It is probable that the New Haven's unified system serves its territory at a less valuation than if there were also additional systems duplicating and intersecting.

The contribution of the stockholders through the loss of dividends: If we assume this on a 6 per cent basis, it is roughly 40 per cent of the par of their stock. Enormous sums have been devoted to the enlargement and betterment of the property during the past seven years.

The New Haven has now devoted more than 4½ years to an intensive study and endeavor to not only solve the New Haven problem, but more than that, to derive the answer for the public of southern New England, the stockholders and the employees, all of whom have been patient, cooperative and helpful, and are deserving of careful consideration of their problem.

The New Haven has carried the load of a larger quantity in increase of transportation than is generally realized, but its service is not yet quite good enough. It must continue to become a still better public agent, to meet the requirements more fully. It can do so, through a continuation of its program and endeavors heretofore. It can only do so, however, on the basis of reasonable compensation. Assuming that the requirements of the public for transportation will continue to be met hereafter, there are three avenues.

The first is that of insolvency in the operation of the railroads, or at the expense of charges on capital invested. Witness is sorry to say that is where they are heading now, but they hope to find a "switch."

236 Such an avenue does not appear to be contemplated by the Transportation Act. Moreover, while it would be disastrous to stockholders, it would not benefit the public at large, as valuation of the property will exceed the securities.

The second avenue is that of increased rates locally. The data submitted shows, by comparison, that such should not be considered in advance of others, except, of course, possible inequalities, or at the worst, to bridge a temporary situation.

The third, and what they hope will be considered the just method, is from increased divisions. This means a thin distribution over the large territory which enjoys the market in New England; in other words, that selling territory carry its part, instead of adding all to buying territory.

In behalf of relief through increased divisions, the following is presented as indicative of the equity of their request: Since the establishment of most of the divisions, many things have transpired to destroy the previously existing basis of equality between the New Haven and its connections.

One item heretofore referred to is the difference between mileage and per diem. It is indefinite. It was estimated at $6,259,-

237 750.

Next, the several increases on transportation of fuel during the past two or three years over foreign lines (not the 40 per cent only, as stated by Mr. Brigham), $3,050,000.

The decrease arising because of the difference in proportions of traffic, roughly half and half, versus ¾ and ¼, $7,300,000.

The rapidly enlarging costs for labor, due to various wage increases, not including the effect of the Adamson Law, necessary in performing the distributive and terminal character of service, versus the relatively less number of traffic units from which rate advances accrue, $9,000,000.

A trunk line with a long haul will, for instance, move the majority of its traffic in a heavy train—we will say 2,000 tons of freight in the train, and they will go 100 miles, and that will be 2,000 times 100 ton miles. There will be 5 or 6 employees on there. When the New Haven makes a corresponding number of ton miles, in order to get their revenues, they may have to run two or three trains. They won't be as heavy. They will have to operate a number of junctions, and that takes a very much larger number of employees and a larger

number of engines, all of which, in the way of employees, and so forth, are on a unit basis as to wages. The cost for the service
238 expands far more rapidly than the revenues accrue. This total, excluding the last item, which was not estimated—the item omitted is the larger investment in property per unit of freight traffic handled,—this is important, but of course it is indefinite. Undoubtedly it is a credit, and a large one, but it is not estimated; omitting that item, the total of the preceding is $25,609,750.

This largely exceeds the additional amount of $15,600,000 estimated as required to produce a return of 6 per cent. on the property and investment account. The property investment account, moreover, is less than the valuation established tentatively.

Surely these facts justify consideration now of added revenue from increased divisions; the amount requested being $15,600,000 by the New Haven and the Central New England railways. This, however, is on the basis of the rate case application for the year ended October 31, 1919; and in quoting a definite figure there witness does so from the records, understanding that an adjustment would follow the tonnage and changes in volume of traffic, and so forth.

Attention is invited to substantiating information concerning the New Haven valuation, and that the inclusion of the New England roads resulted in an average increase of somewhere about 1½
239 per cent., more or less, in the remainder of the Eastern group from which divisions are asked. Whether or not these roads now enjoy a surplus from this source, it is apparent they benefit over what would otherwise be their status.

With the present decreased volume of traffic, we are not assured the divisions asked, granted in full, will fully meet the ever-present requirements for solvency; but we do believe they will put the New Haven on a nearer basis of equality with its connections. When the New Haven is so placed on a proper basis of equality, it will then fare relatively and be somewhat similarly affected by general, territorial or national actions hereafter, such, for example, as percentage increases or decreases in rates, in wages, or from changes from the prevailing prices for fuel and supplies.

The net income of the New Haven and the Central New England in September was a deficit of $733,763; in October $1,257,487, and it is estimated for November (for which much of the supporting data is at hand) $2,247,416, and, further, for December, $2,142,688. Those represent red figures as to net income.

A forecast under such circumstances is exceedingly difficult to make. Looking ahead, however, it is necessary, in order that
240 we may lay our plans for such course of action as is necessary. If the circumstances are more favorable than are hoped for when the estimate is made, and it looks as if the figures were overestimated, there cannot help but be the impression that the man making the estimate is crying "wolf."

On the contrary, if we have a serious winter ahead of us, with traffic results still more unfavorable, our estimate will fail.

The best guess that witness can make of the results for this year,

commencing in October and extending ahead, is $17,300,000 in the red.

In giving these figures, witness realizes that they may not work out in the future; but they are the best estimate he can make, and as conservative as he can conceive, taking into account all the probable circumstances, hope for a favorable winter, and not a bad one.

The larger deficit in October and November than in September is accounted for by some reduction in traffic. As traffic declines, the effect is felt very rapidly, because there is so much fixed service. There should be a more complete reflection of the increased rates in October than in September.

241 It is obvious the corporation cannot continue long under such prospects. It is entitled to and should be awarded larger compensation out of the gross revenues for performing its portion, the more expensive portion, of the joint service performed for the country as a whole.

In addition to the hoped-for relief through divisions, the New Haven is working toward the elimination of certain low rate trip tickets; a 10-cent passenger minimum corresponding to that on the Boston Elevated and the Connecticut trolleys; the complete application of the Anderson scale, and is giving attention to other rates, if any, that may be out of proper comparison, but the possible amounts from any such increases will be insignificant.

It is the further purpose of the management to increase its endeavors toward still better service, toward increased efficiency and economy, and through these sources, and any other that may be developed, and with a hoped-for increase in the present volume of traffic, to build up something which will, in time, aid in securing a return eventually on that part of the valuation already shown to be in excess of the property investment account, on which the present consideration of these matters rests.

In speaking of the $15,600,000, which is the amount in these exhibits which have been put in, the amount today would be less, because the volume of traffic moving is less.

242 If the annual return to the New Haven on freight traffic is $73,000,000, and if that $15,600,000 was granted, the return then would be $88,600,000, which figures an operating ratio of approximately 84 per cent.

If the gross on intra-trunk line traffic is $40,000,000 a year, and if there should be a 40 per cent. increase on that gross, that would return substantially the $15,600,000. If, for example,—and witness has not the exact figures—the earnings on that traffic were double those of the New Haven, or $80,000,000, that would be a total on that traffic of $120,000,000; and it would mean, after the granting of the increase, that out of that total the New Haven would derive $55,600,000, instead of $40,000,000.

Considering the rates, 6 cents for local, 4 cents for intra-New England, 1½ on this traffic on which we are losing our money—if that 40 per cent. was applied to the 1½ it would become, roughly, 2.1 cents; and still it is but slightly in excess of half of the rate on which the intra-New England traffic moves.

Another comparison as to the reasonableness of the solution: Our operating costs are higher, for freight. They are somewhere along double. Witness is sorry that he cannot give actual figures.
243 Such a rate, of perhaps 2.1 or 2.2 cents, might bear about the same relation to the average rate on trunk line.

There have been remarks or questions indicating that it is the thought of the other roads that we are asking them to support us; but witness wishes to call attention to this: We are not asking them to support New England. We are asking them to pay us our fair part of doing the expensive part of a joint traffic; and, Mr. Chairman, it is a traffic in which they are just as much interested as is New England.

A very large amount of munitions was manufactured during the war by plants on the New Haven,—roughly, about half the total produced in the country during the early years of the war. These were substantially entirely dependent on the New Haven for transportation.

The outstanding capital stock of the New Haven Railroad is about $157,000,000, approximately, for which, witness believes, the stockholders have paid in part a considerable premium. The public records seem to indicate that the stock has been sold as high as 200 and over. According to the papers, it is now selling in the market at $16 and $17.

Cross-examination:

Witness has not the figures at hand to show what amount
244 of New Haven's fixed charges represent property other than steam transportation property. The higher valuation is such that after any house cleaning which the New Haven may be obliged to do, what is represented will be more than par on its stock. All of the $49,000,000 in additions and betterments since 1913 was expended on the steam railroad property and the New Haven and the Central New England. The present property investment includes an item of $40,000,000 plus, representing the New Haven's interest in the New York terminals, which is an estimate of the value of property used by the New Haven in performing transportation; and the value of the property used, on which it compensates the owner and for which it is entitled to receive compensation for the performance of transportation.

Witness' proposal of 35 cents and 50 cents, and $1.10, on different classes of traffic would not in witness' opinion give to the New Haven System what it regards as its fair proportion of this alleged $24,000,000. There would have to be a redistribution of these earnings within New England in order to give the New Haven what witness considers its fair share of that amount.

Redirect examination:

Asked with regard to the 35 cents, the 50 cents, and the
245 $1.10, whether he had some other plan in mind, witness testified:

"I think everybody connected with this matter has been giving it the best and hardest study that they can; and Mr. Campbell has developed a plan which, we believe, will be more simple and more direct and more quickly applicable."

Mr. Campbell will present that plan.

JAMES H. HUSTIS, called as a witness by the complainants, testified:

That he is President of the Boston & Maine Railroad, and has held that position since August, 1914. During Federal control he was district director for the New England district. Witness' railroad experience began with his employment on the New York Central, as a boy, in 1878. He was with the New York Central and held various positions on the New York Central until 1907, when he was sent to Boston, in charge of the Boston & Albany. He was chief executive officer of that road for 6 years. He was then President of the New Haven road for 1 year; and since that time he has been President and, for a portion of the time, receiver of the Boston & Maine Railroad, and during Federal control was District Director for most of the Federal control period.

Witness will speak only for the Boston & Maine, but
246 desires to refer briefly to the general New England railroad situation from an experience gained first as an officer with an important trunk line having direct connection with the New England railroads, and latterly—since 1907, as chief executive, at various times, of the three principal New England railroads, and during the Federal control period as district director of all the railroads within the territory.

As a result of the experience witness has long been convinced that the New England railroads are an important integral part of our national transportation system and that whatever affected New England railroads unfavorably in respect to operation was reflected back not only to their immediate railroad connections, but to their connections and in turn to theirs.

Taking the year 1900 as a basing point, witness feels confident in asserting there has scarcely been a normal business year since, when traffic offered the New England railroads by their western connections, during the seasons of heavy business, has not been clogged at their western terminals. As regularly as this situation has arisen, it has as regularly resulted in the slowing down of freight movement within New England, and has seriously affected the free
247 movement of freight on the roads to the west of the Hudson River. Their terminals have been clogged as well, and in many instances their running tracks for many miles beyond the Hudson River have been filled as the result of that congestion.

This has caused great delay to freight cars valued at millions of dollars; the restricted use of locomotives; the slowing down of movement, with its attendant increase in expense; and a serious injury to the shipper and receiver of freight, by reason of the delay and uncertainty of delivery, inevitably resulting in duplication of orders and tying up of immense sums of capital.

The value of the single item of freight cars on the New England roads each day represents a capital expenditure, at present prices, of approximately $300,000,000. Any interference with the movement of these cars means heavy losses to the railroads. It also means heavy losses to their patrons, for these patrons are thereby required to carry stocks, involving much additional capital.

As illustrating these losses, an executive of one of our leading banks has pointed out the close connection between transportation and commercial finance. During periods of freight congestion, from all sides complaints have been received from the bank's customers of the tie-up of their funds. Many customers were not able
248 to collect their bills receivable, owing to the fact that those to whom they shipped goods would not pay until goods were received. On the other hand, many of them to whom goods had been shipped were forced to pay under the terms of their purchase long before the goods reached their hands. Discounts in this bank alone increased several millions during a recent period of congestion, and it is believed that the larger portion of this amount was due to the delay of merchandise in transit. The New England railroads handle millions of tons every month. When any considerable part of this tonnage is materially delayed, it is easy to understand that many millions of dollars are involved and how greatly this amount would be multiplied when the congestion beyond New England is included.

As is known, the factories of New England were essential to the success of the war in their woolen and cotton production, in leather products, in arms and high grade machinery. The railroads were called upon to move these products, as well as foodstuffs and lumber, in large quantities. The railroads were likewise essential in their ability to handle the export freight which sought their ports.

It was physically impossible for the New England roads to take on all the increased demands, due to the all-rail
249 coal movement caused by the withdrawal of coastwise shipping. This all-rail coal tonnage, moved by the Boston & Maine, Boston & Albany and New Haven, which in 1915 amounted to 12,600,000 net tons, in 1918 reached 22,400,000 net tons, an increase of 78 per cent. During the same period, the tonnage of all freight handled by those roads increased 33 per cent.

Witness is mentioning these facts so that the Commission will not only have in mind the importance of the New England railroads to the nation, during the recent war, but also their necessity as a vital part of the transportation machine of the nation at all times unless New England industrially is to stagnate, and that is inconceivable.

The New England states manufacture over 60 per cent of the wool used in the United States. New England cotton mills contain 53 per cent of the spindles in the United States. New England paper and board mills produce 27 per cent of the output of the mills of the country. New England produces 52 per cent of the boots and shoes of the United States. On the other hand, aside from lumber and pulpwood, practically all of the raw materials used in these and other important industries must be brought to New England.

Because of this necessary movement of raw materials into
250 New England, and of finished products out of New England, the operation of the New England roads is as important and essential to the trunk lines and the lines in Central Freight Association territory as it is to New England. Not only are their interests interdependent and not only do they prosper or suffer together, but the interests of the communities which they serve are likewise involved.

There is a further lesson to be drawn from what witness is attempting to develop, and that is if the New England railroads are to continue to provide the kind of transportation so essential not only to New England but to the country as a whole, they must be placed on a financial basis such as will permit them to expand to meet the growing business of the country.

Viewed from the standpoint of transportation, if nothing else came as a result of the war, at least it brought to the attention of the nation more forcibly than ever before this situation: the necessity of building up a railroad system that will meet the demands of commerce.

If the New England railroads are not placed in a position where they can grow to meet the increasing demands of business, the situation of the past may well be expected to repeat itself. Transportation is the foundation of our economic strength.

251 Relief must come, and quickly, whether and to what extent through increased divisions you will determine after hearing the evidence.

Our present purpose and immediate need is to secure increased revenue through increased divisions sufficient to assure the solvency of our railroads under private control.

When the equities in the case have been established witness has no doubt that New England may be depended on to do its part in providing adequate transportation. The measure of relief which should come through increased divisions, therefore, is of vital importance in the consideration of the case before you.

The principle of special divisions or arbitraries to meet particular conditions has always been recognized but its application has been far from scientific and as between allowances by the trunk lines at the present time there is a lack of consistency throughout. There is, therefore, nothing sacred in the existing division schedules. They were established under entirely different conditions from those existing today, as has been developed by preceding witnesses. If it was proper in the earlier days to recognize special divisions or arbitraries to meet the then existing conditions, it is proper that under the changed conditions now existing these allowances should
252 be reviewed.

The Transportation Act (amending Section 15 of the Interstate Commerce Act) recognizes this principle. We know, and our witnesses have testified, that per diem instead of mileage payments for freight car hire, that fuel and material costs, including increased freight charges thereon, that the effect of increased rates of pay generally and for non-productive labor, such as crossing flagmen, have

borne more heavily on the New England lines than on railroads generally.

Witness now speaks briefly for the Boston & Maine.

Prof. Cunningham, who has been connected with the New England railroads for the past 13 years, and for the last 6 an officer of the Boston & Maine, in his general testimony has covered the operating conditions which we believe are peculiar to New England and to the Boston & Maine and because of which we are seeking relief. Witness will not therefore deal with those phases on which Prof. Cunningham has addressed you.

In its general aspects, its case, except as to its needs, is not materially different than when witness had the duty of presenting the needs before your honorable body in the so-called Fifteen Per Cent Rate Case in November, 1917.

253 The Boston & Maine occupies an important position in New England. It has direct connections with all of the other New England systems, with the exception of the Bangor & Aroostook. So far as through traffic is concerned, it has direct connections with the New York Central, Delaware & Hudson, Canadian Pacific and Grand Trunk Railroads, and directly receives from those railroads from 325,000 to 350,000 loaded cars per year, or ¼ of the total freight traffic coming into New England. If from the total loaded cars coming into New England we exclude the traffic received via the Boston & Albany western gateways (that railroad, in the present proceedings, being regarded as part of the New York Central System), the Boston & Maine handles ⅓ of the balance.

Of the all-rail coal traffic, which has been so vital to New England during recent years, the Boston & Maine handles over 30 per cent of the total coming into New England.

The Boston & Maine's revenue ton miles which in 1901 amounted to 1,500 millions increased to 3,600 millions in 1918, an increase of 135 per cent. In 1919 the revenue ton miles were about 3,300 millions. ⅓ of this traffic moves over its Fitchburg and Berkshire divisions which constitute less than 1/5 of the road mileage, and less than ¼ of the track mileage of the railroad.

254 As to comparative results of operations: Since 1906 the trainload has shown an increase from year to year without exception. In 1906 the revenue tons per freight train mile averaged 211; in 1919 the figure was 448, an increase of 112 per cent in 13 years. For the 9 months of 1920 the figure had reached 450 tons.

In 1914 (since which time the figures have been compiled) the average ton miles per car day were 223, increasing from year to year until 1918, when 325 was reached, an increase of 46 per cent in 4 years. In 1919, with a decrease in business, the net ton miles per car day dropped to 299, which, however, had not been exceeded in any year except 1918.

Notwitl standing the changed mental attitude of and toward labor, as an outcome of the abnormal developments during and since the war, these results would not have been possible without the intelligent and loyal cooperation of both officers and men.

While witness does not wish to burden the Commission with unnecessary details, he desires to call their attention to the fact that the additions and betterments for the growing needs of the property have been substantial and constant, amounting to $18,000,000 during the
period from July 1, 1910, to December 31, 1919, or an aver-
255 age of about $5,000,000 per year.

It also seems proper to call to the Commission's attention that none of the net income from April 1, 1913, to December 31, 1919, applicable to dividends on the old preferred and common stock, and amounting to about $5,000,000, has been paid to the stockholders.

There must continue to be spent annually even larger amounts for the upkeep and extension of facilities if an efficient railroad system is to be maintained.

In the recent report of your honorable board to Congress, you have recommended the adoption of steel for wooden cars. This one item alone would represent for the Boston & Maine at present prices an expenditure of approximately $50,000,000 with a doubtful salvage value of present passenger equipment (of which about 1/5 is more than 30 years old, and about 1/2 is 20 or more years old).

The adoption of steel passenger car equipment carries with it collateral expenses for heavier locomotives to haul the heavier cars, and for yard and shop facilities for taking care of such equipment, running into a very large capital investment.

The adoption of the most modern methods of electrically locked
signalling, which, like the steel cars, every manager would be
256 be glad to install and which ought not to be unnecessarily
delayed, would require a further expenditure likewise running into millions.

The recent requirement for the adoption of electric locomotive headlights on the Boston & Maine alone represents a capital expenditure of approximately $300,000, and an annual increased operating cost of at least $30,000 per annum.

The list could be extended of improvements made necessary by state or Federal requirements that have added materially to the capital investment and operating costs, but which have not produced operating economies.

Witness does not refer to these matters in a critical spirit but rather in explanation of the effect of the demands of modern society on railroad operation.

The Transportation Act provides that the Commission shall establish rates which under certain conditions will produce for the carriers as a whole, or as a whole in such rate groups as the Commission may designate, a net railway operating income equal to 5 1/2 per cent on the aggregate value of the railway property of such carriers, or in the discretion of the Commission, 6 per cent.

If the Boston & Maine should realize a 6 per cent return on even
its conservatively stated book value, it would have a net rail-
257 way operating income of over $14,000,000, enough to meet
fixed charges, preferred dividends, and leaving a surplus of over $5,000,000 with which to meet equipment instalments, sinking

fund requirements, and provide a return of approximately 39½ million common stock, much of which was sold at substantial premiums above par and some of which was sold in the market for over $200.

Witness believes the present quotation for it is around 30.

Actually, the latest estimate of net railway operating income is less than $2,700,000, or slightly more than one per cent on the book value of the property. The corresponding average for the test period was in excess of $9,800,000. Prior to the war, however, the Boston & Maine was just beginning to get on a satisfactory basis of earning power. In 1916 it earned the highest net income in the history of the property, having over $4,000,000 net after the payment of all charges.

If this estimate of $2,700,000 net railway operating income were realized the Boston & Maine would fail by nearly $3,500,000 to meet its fixed charges, not including dividends on first preferred stocks, which until recently were guaranteed rentals on leased lines. This estimate makes no allowance for the present reduction in volume of business, and results for current months under existing rates
258 indicate a much larger deficit.

On December 1, 1919, a reorganization of the Boston & Maine was effected. By this reorganization the holders of certain leased line stocks, aggregating a par value of nearly $39,000,000, agreed to exchange these stocks for first preferred stocks in the reorganized company, thereby eliminating fixed charges of over 2½ millions a year, and making the return to these stockholders contingent upon earnings. The fact that it has been necessary to defer the payment of the dividend upon these stocks, which would normally be due December 31st, indicates the concession made by these stockholders. It was further agreed that the normal dividend on these stocks should be reduced by 20 per cent for 5 years, and that the amount of this reduction of approximately 2½ million dollars should be applied to the sinking fund established for the purpose of reducing the amount of bonds of the Boston & Maine held by the Director General. The result of this reorganization has been to improve the financial structure of the company and to reduce fixed charges which must be met out of operating income to less than 6½ million dollars, a very moderate sum when considered with the book cost of $240,000,000, or of the cost of reproduction of $278,000,000 indicated by the tentative valuation figures.

259 It is necessary that the Boston & Maine should be able to earn more than enough merely to meet its charges, and to pay its preferred dividends. Unless an adequate return is earned on the common stock it will not be possible to refund existing bonds on reasonable conditions, or to secure the new capital which is absolutely essential.

Under these circumstances it is apparent that development and improvements essential for the safe and proper conduct of the railroad are impossible. And under such circumstances the manager, however sincere may be his desire and however great his ability,

and although supported by as loyal and efficient a force as may be possible, is helpless.

That is the condition we are facing today. If private operation is to endure, help must come and come speedily, otherwise the next step is but a short distance off.

The Boston & Maine was turned over by the witness as receiver to its owners on December 1st last. The reorganization eliminated about 2½ millions of fixed charges. Owing to conditions which have prevailed this autumn, they have been obliged to defer even the payment required on the preferred stock which took the place of the leased line stocks.

260 Cross-examination:

Asked how much of this $24,000,000 is claimed by the Boston & Maine, the witness said: "We haven't made any claim yet."

Asked how much they were equitably entitled to on the basis of the calculations which are involved in the $24,000,000, the witness said:

"That matter has been more or less discussed, and in the application we filed with the Interstate Commerce Commission it was provided that, if we did not come to an agreement between ourselves, we would abide by the Commission's decision. But I may say that one method of distribution that was considered was using the same method that had been used in the rate case; that is, the property investment account."

The figure of $2,507,000 as a deficit for the Boston & Maine, shown on sheet 2 of Exhibit No. 6, submitted by Mr. Brigham, was based on certain estimated figures. That was made up early this year. They found very soon after that statement was prepared that that was not a figure that could be used.

Witness thinks he is correct in stating that that assumed deficit is based on the constructive year used in Ex Parte 74.

261 Witness thinks that he has seen figures which would indicate that this proposal of 35 cents and 50 cents and $1.10 on various classes of traffic, respectively, would give the Boston & Maine considerably more than this figure, or considerably more than any proportion of $24,000,000 that could be derived from any calculation that has been made with respect to it. He has no plan for relieving the treasury of the Boston & Maine of that surplus; but if that amount came to them they certainly could find some way to help out their more unfortunate neighbors.

Witness is not familiar with the plan Mr. Campbell is to propose.

Redirect examination:

In round figures, the United States has now advanced about $20,000,000 to the Boston & Maine to take up the floating indebtedness, which permitted the road to be reorganized. They advanced about $8,000,000 for improvements that were placed on the road during Federal control; they advanced about $8,000,000 for refund-

ing some bonds that came due, and then there was an additional amount advanced for equipment. That is a total of between $50,000,000 and $60,000,000, if not more. The Commission have already approved a further loan of about $6,000,000, for im-
262 provements and equipment. Some of these improvements were started prior to the war. For these loans the Railroad Administration has taken the company's bonds.

EDWARD G. BUCKLAND, called as a witness by the complainants, testified:

That he was Vice-President and general counsel of the New York, New Haven & Hartford Railroad Company.

The amount advanced by the Government to refund the indebtedness of the New Haven road, accruing on April 15, 1918, and again refunded in 1920, was $43,026,500. The amount advanced by the Government for additions and betterments during Federal control was $17,000,000 exactly. The amount heretofore loaned on account of additions and betterments is $6,730,000.

The amount to be loaned under the certificate of the Interstate Commerce Commission as soon as our equipment is received, and for the remaining additions and betterments, will be: On equipment, $1,500,000; on additions and betterments, $1,400,000—$2,900,000—making a total amount loaned by the Government on account of additions and betterments or equipment of $9,230,000,—a total of about $69,000,000.

263 EDWARD CURTIS SMITH, called as a witness on behalf of the complainants, testified:

That he is the President of the Vermont Central Railway, and has held that position from 1913 to the present time. He was also President from 1900 until 1902. He was President prior to that time from 1891, and Vice-President before that. He was Governor of Vermont from 1898 to 1900.

The Central Vermont Railway runs from New London north to St. Albans, in a general way.

The statement which witness has is simply a brief in regard to the situation affecting the Central Vermont Railway, and the witness read it, as follows:

The following facts and figures are respectfully submitted, on behalf of the Central Vermont Railway Company, to show its particular requirements and the justice, so far as it is concerned, of granting the increased divisions asked by the complainants in their case:

The Central Vermont Railway Company operates a rail line, through ownership, leases and trackage rights, from St. Johns, Que., and Rouses Point, N. Y., through Vermont, Massachusetts and Connecticut to New London, Conn., and thence, by a line of freight boats of the Central Vermont Transportation Company, which is

owned and operated by the Central Vermont Railway Com-
264 pany, to Pier 29, East River, New York City; and has important connections with the Grand Trunk Railway at St. Johns, P. Q., and Swanton, Vt.; with the Delaware & Hudson Railroad at Rouses Point, N. Y.; with the Rutland Railroad at Rouses Point, N. Y., and Burlington, Vt.; with the Boston & Maine Railroad at White River Junction, Vt.; East Northfield, Vt., and Millers Falls, Mass.; with the Boston & Albany Railroad at Palmer, Mass.; and with the New York, New Haven & Hartford Railroad at Willimantic and at New London, Conn. The importance of said boat line between New London and New York City was considered by this Commission in Central Vermont Boat Lines, Vol. 40 I. C. C. Rep., 589. The Central Vermont Railroad ranks as one of the oldest and largest established rail lines between New England and the West dating back to about 1865. The capital stock of the Central Vermont Railway Company is $3,000,000. Its bonded debt is $15,000,000, of which $12,000,000 is outstanding. Its total fixed charges including its rentals of leased lines is $860,000.

The company has paid the interest on its bonded debt since 1881 and has earned its total fixed charges in every year since that date with perhaps one or two exceptions, until the period of Federal control.

No dividends have been paid on its capital stock since
265 1881. Witness subjoins a statement showing the sharp decline in the railway operating income of the Central Vermont Railway Company, taking 2 years; 1 year ending June 30, 1912, and 1 year ending June 30, 1920.

(Here follows statement marked page 266.)

Statement Showing the Sharp Decline in the Railway Operating Income and the Operating Ratio, Be

	June 30, 1912.	June 30, 1913.
Ry. Oper. Revenues	$4,273,082	$4,411,810
Ry. Oper. Expenses	3,297,928	3,505,181
Net. Oper. — or Deficit	975,154	906,629
Ry. Tax Accruals	145.768	180,664
Oper. Income or Loss	829,386	725,965
Operating ratio excluding taxes	77.17	79.44
Operating ratio including taxes	80.59	83.54

e of the Central Vermont Railway Company for the Fiscal Years Ending June 30, 1912-1920, *th Excluding and Including Taxes for Same Period.*

June 30, 1914.	June 30, 1915.	June 30, 1916.	June 30, 1917.	June 30, 1918.	June 30, 1919.	June 30, 1920.
$4,379,615	$4,053,984	$4,403,946	$4,503,365	$5,135,983	$5,898,224	$6,870,930
3,809,258	3,166,472	3,308,557	3,578,376	5,114,205	6,777,430	8,057,491
570,357	887,512	1,095,389	924,989	21,778	(red) 879,206	(red) 1,186,561
194,709	188,316	190,172	182,725	164,560	194,708	197,932
375,648	699,196	905,217	742,264	(red) 142,782	(red) 1,073,914	(red) 1,384,493
86.97	78.10	75.12	79.46	99.57	114.90	117.26
91.42	82.75	79.44	83.51	102.78	118.20	120.15

267 *Uncollectible Railway Revenues, Joint Facility Rents, Hire or Equipment, Rents for Lease of Road, Interest on Funded and Unfunded Debt, and Other Fixed Charges for the Fiscal Years Ending June 30, 1912-1920, Excluding Dividends, as None Were Ever Paid.*

	June 30, 1912.	June 30, 1913.	June 30, 1914.	June 30, 1915.	June 30, 1916.
Uncollectible Ry. Rev.....	$.....	$.....	$.....	$745	$41
Joint Facility Rents.....	Cr. 11,556	Cr. 11,847	Cr. 10,850	Cr. 11,246	Cr. 8,894
Hire of Equipment.....	Dr. 127,986	Cr. 21,840	Dr. 5,785	Cr. 5,068	Dr. 47,313
Rent for Lease of Road:					
Int. on funded debt.....	Dr. 467,414	Dr. 501,518	Dr. 490,463	Dr. 480,168	Dr. 470,318
Int. on unfunded debt.....	Dr. 8,993	Dr. 3,921	Dr. 7,935	Cr. 446	Dr. 28,235
Rent for leased roads.....	Dr. 216,553	Dr. 215,553	Dr. 216,553	Dr. 216,553	Dr. 216,553
Misc. rents.....	18,124	20,989	16,639	23,630	23,125
	Dr. $809,528	Dr. $701,452	Dr. $726,525	Dr. $705,336	Dr. $776,691

	June 30, 1917.	June 30, 1918.	June 30, 1919.	June 30, 1920.
Uncollectible Ry. Rev.....	$314	$275	$139	$460
Joint Facility Rents.....	Cr. 7,350	Cr. 29,058	Cr. 33,683	Cr. 36,042
Hire of Equipment.....	Cr. 31,280	Dr. 57,543	Dr. 53,982	Dr. 205,840
Rent for Lease of Road:				
Int. on Funded Debt.....	Dr. 442,053	Dr. 463,343	Dr. 458,423	Dr. 455,510
Int. on Unfunded Debt.....	Dr. 64,580	Dr. 62,786	Dr. 49,755	Dr. 55,502
Rent for Leased Roads.....	Dr. 216,553	Dr. 216,553	Dr. 216,553	Dr. 216,553
Misc. Rents.....	26,987	21,677	21,987	22,903
	Dr. $711,857	Dr. $793,119	Dr. $767,156	Dr. $920,326

268 Witness also includes a statement showing the number of ton miles of revenue freight for the same period of years, showing that in the year ended June 30, 1912, it was 309 million, and for the year ended June 30, 1920, it was 336 million ton miles of revenue freight, in round numbers.

(The statement above referred to is as follows:)

The Number of Ton Miles of Revenue Freight on the Central Vermont Railway for the Fiscal Years Ending June 30, 1912–1920.

Year ended June 30.	Ton-miles of revenue freight.
1912	309,505,019
1913	318,758,408
1914	331,141,087
1915	292,602,872
1916	324,528,704
1917	281,635,054
1918	295,281,644
1919	268,699,622
1920	336,355,728

That was the net result of operation.

The estimated increased revenue of the Central Vermont Railway Company from the increased passenger fares, excess baggage rates, Pullman surcharges, and cream increases, based on revenues
269 for the fiscal year ending June 30, 1920, amount in the aggregate to $287,000, as follows:

Passenger 20%	$251,146.19
Excess Baggage 20%	1,497.56
Pullman Surcharge 50%	5,478.64
Milk and Cream 20%	29,778.57
Total	$287,890.96

The estimated increased revenue of the Central Vermont Railway Company from the 40 per cent. increase in switching and special service, based on switching revenue for fiscal year ending June 30, 1920, is $21,219.78.

The estimated increased revenue of the Central Vermont Railway Company from the 40 per cent. increase in freight rates, based on the freight revenue for the fiscal year ending June 30, 1920, is $1,967,671.26.

The net result to the Central Vermont Railway Company of the entire situation may be shown by the following:

A careful computation, based on statements prepared by the New England Accounting Committee and submitted to the Trunk Line representatives, shows that, after allowing for the increase in revenue resulting from the increased rates allowed by this Commission in Ex Parte 74, the Central Vermont Railway Company and the Central Vermont Transportation Company together will have an annual deficit of approximately $483,000, without providing for any
270 return on investment; and that yield a return of 6 per cent. on investment would require an additional revenue of $1,822,656, so that without the aid by way of increased divisions asked in this case, the prediction is obvious.

Some of the reasons that conspired to produce the radical change in net revenue from the period prior to 1913 as compared with the present are as follows:

First, the question of labor. The price of labor in the various departments ran up from 161 per cent. to 340 per cent. Witness has here the various increases and the comparison, but they average about 250 to 275 per cent. increase on the Central Vermont Railway.

Witness was formerly able to operate the Vermont Central Railway at a lower scale of wages than roads in southern New England, very much so. This arose through the fact that it was a sparsely settled country; the rents and living costs were less than they were in other places, and the people were more thrifty. Most of the men lived along the road, and owned their homes, and had grown up there. The increases in wages were greater, witness thinks, than on any road in the United States, with one exception.

(The statement last above referred to is as follows:)

271 *Statement Showing the Wage Rate Paid by the Central Vermont Railway Company During the "Test" Period Compared with the Rate under Decision No. 2 of the United States Labor Board.*

Maintenance of Equipment.

Occupation.	Test period, average rate per hour.	U. S. Labor Board Decision No. 2, average rate per hour.	Per cent increase.
Steam Locomotives:			
Gangs and other foremen..	.29	.91	209
Machinists	.23	.84	250
Boilermakers	.25	.82	221
Blacksmiths	.23	.83	259
Painters	.20	.80	289
Electricians	.21	.85	298
Air brake men.....	.31	.90	161
Other skilled laborers.....	.24	.82	237
Mechanics' helpers and apprentices	.15	.64	306
Freight Train Cars:			
Gangs and other foremen..	.25	.86	342
Blacksmiths	.25	.80	218
Carpenters	.21	.78	265
272			
Painters	.26	.78	200
Air brake men.....	.19	.73	284
Car inspectors.....	.17	.78	335
Car Repairers.....	.18	.77	321
Other skilled laborers.....	.28	.82	209

Occupation.	Test period, average rate per hour.	U. S. Labor Board Decision No. 2, average rate per hour.	Per cent increase.
Passenger Train Cars:			
Gangs and other foremen..	.24	.88	257
Carpenters	.21	.80	273
Painters & Upholsterers....	.20	.78	284
Electricians	...	.86	...
Air brake men.....	.18	.78	318
Car inspectors.....	...	.73	...
Car repairers.....	.16	.64	292
Other skilled laborers.....	.21	.83	282
Mechanics' helpers and apprentices	.15	.68	340
Superintendence:			
General foremen.....	.30	1.03	233
Clerks and attendants.....	.17	.52	203
Asst. Engineers & draftsmen	.28	.71	153
273 Maintenance of Way & Structures.			
Superintendence:			
Division officers.....	.45	.98	118
Clerks and attendants.....	.25	.61	144
Asst. engineers & draftsmen	.47	.88	87
Roadway and Tracks:			
Section foremen.....	.20	.63	200
Section men.....	.16	.49	206
Others	.18	.50	178
Structures:			
Bridges, trestles & culverts..	.23	.57	148
Stations and office buildings	.23	.61	154
Shops and enginehouses ...	.22	.62	170

Another thing that militates against the situation, on the Central Vermont, is the fact that St. Albans is a port of entry and that, as compared with roads that do not run into Canada or have customs duties, the expense on the Central Vermont is additional. Both Canadian and American customs work there results in much delay to equipment and in extra switching, entailing a very heavy
274 expense for such a short line as the Vermont Railway. That is more fully illustrated in the following statement:

American Customs.

The average number of dutiable cars received a day is 89. These are weighed and duties collected, with an average delay of 48 hours per car.

About 15 hours is daily consumed in switching these cars on to storage tracks, and taking back from storage tracks to put into trains, cost $154.80 per day, or per month $4,644

Canadian Customs.

The average number of dutiable cars received a day is 21. These cars are weighed and duties collected with an average delay of 48 hours per car.

About 5 hours is daily consumed in switching these cars, switching onto storage tracks, and taking them from storage tracks to put into trains, cost $38.70 per day, or month	1,161
Canadian customs inspector at St. Albans, salary.....	120
Clerks customs (3) salary.....	350
Checkers and porters customs, (3) salary.....	300
275	
10% of (4) clerks' time in terminal yardmaster's office, is devoted to customs work.....	50
10% of (5) clerks' time in interchange office is devoted to customs work.....	60
Overtime for work performed by U. S. customs inspectors on holidays, Sundays and Saturday afternoons.....	100
Lodging, etc., of Canadian customs inspectors as per agreement whereby trains are not held at St. Armand to complete examination.....	75
Car seals and stationery used entirely in customs work....	25
	$6,885

The increased freight rates will annually cost the Central Vermont Railway Company approximately $150,000 for increased freight charges on coal and other material and with this increase which the Central Vermont Railway Company pays other lines the freight charges on material and supplies will amount to approximately 7 per cent of total revenue. Railroads near the coal mines and near the source of supply are spared a large part of this expense, which so handicaps the carriers of New England in general and the Central Vermont Railway Company in particular as it operates in the northern part of that territory.

The average annual cost of keeping the line of the Central Vermont clear of snow and ice, also danger account of high water

in spring, for the 9 years ending June 30, 1920, was approximately 1 per cent of our total annual revenue.

276 The cost of doing business at St. Albans yard on account of American and Canadian customs is approximately $7,000 a month or $84,000 a year. Being on the Canadian border, the Central Vermont really does this work for all the lines in New England over which Central Vermont traffic passes, and therefore gets only the revenue that accrues to it from the established divisions. This extra expense is approximately 1 per cent of our total revenue.

All of these latter expenses, not including increases in labor, total 9 per cent of our entire revenue and are imposed because of our peculiar situation as compared with other lines that do not operate under the same disadvantages, and should alone warrant increased divisions to cover this peculiar expense.

In addition to the expenses mentioned in paragraphs 2, 3, 4, 5, and 6, the standardization of wages really means a larger increase to the Central Vermont than to other roads, because it operates in a sparsely settled country where naturally wages are lower than in the more densely populated districts. The whole State of Vermont has not so many inhabitants as the City of Buffalo; and before the standardization of wages, the Central Vermont Railway Company was paying a very much lower wage rate than other Eastern roads.

277 One of the foregoing statements shows the wage rate per hour during the test period and as established by the U. S. Labor Board, and shows that the percentage increase is from 150 to 340 per cent.

The foregoing facts and figures strongly demonstrate the peculiar and expensive hardship of operating the Central Vermont Railway and, with the other facts and figures already known to the Commission, show the justice and equity, so far as concerns the Central Vermont Railway Company, of granting the increased divisions asked by the complainants in this case.

Finally, as all the foregoing facts and figures clearly show, unless the Commission aids the Central Vermont Railway by the increased divisions asked in this case, or otherwise, the conclusion is obvious.

Recess until Saturday, December 18, 1920, at 10 o'clock A. M.

278 Washington, D. C.,
December 18, 1920—10 a. m.

EDWARD CURTIS SMITH resumed the stand and testified:

Cross-examination:

The Central Vermont Railway has 30,000 shares of stock, and about two-thirds of it is owned by the Grand Trunk Company. On the tonnage interchanged between the Central Vermont and the other roads, there is a great deal more goes to the Grand Trunk than goes to the Trunk Lines defendants in this case. The division arrangements with the Grand Trunk are of long standing, and the Central Vermont has not been granted any better basis of divisions

by the Grand Trunk since it encountered the difficulties witness has described. The Central Vermont failed by in the neighborhood of $2,000,000 to earn 6 per cent on its property. The Central Vermont interchanges with the Eastern trunk lines excluding the Canadian lines about 600,000 tons. Of that, approximately $2,000,000, which the witness says the Central Vermont was short of the 6 per cent, the witness would expect to obtain between 70 cents and $1.20 per ton on the whole of it from this 600,000 tons. The
279 principal commodities that originate and terminate on the Central Vermont are grain, manufactured articles, granite, and coal. Grain is about 21 per cent of this interchange tonnage. Granite moves on very low rates. The Central Vermont's present contract for coal is about $6.59, on the engine. This coal is procured from the B. R. & P., and there is one other contract, but witness does not remember the name of the company. The cost at the mine is $3.50. That was the original contract price, but that was advanced by the advance in wages, so that witness thinks it is a little over $4 and something now. The estimate on the engine is about $6.60 to $6.70.

Though the Grand Trunk has owned a majority of the stock of the Central Vermont since 1881, they have never issued a circular or order in regard to the latter. The Central Vermont has always been operated as an independent proposition.

Redirect examination:

The coal comes to the Central Vermont at Rouses Point and at South Vernon. It comes from the Delaware & Hudson in both instances. In the latter instance it passes over the Fitchburg Railroad up to Miller's Falls, and the Boston & Maine from Miller's Falls, and over witness' 14 miles to White River Junction, and it is distributed from that end of the system. The other coal comes from the Delaware & Hudson up to Rouses Point, and down over the Central Vermont in that direction. They also get some coal, witness thinks, from the Delaware & Hudson, over the Rutland at Burlington, and it is distributed from that point.

280 The Grand Trunk holds 21,000 shares of the Central Vermont stock. The balance is widely scattered among 386 stockholders. The interchange traffic on the Central Vermont is about 70 per cent of its entire tonnage, and the passenger business is about 21 or 22 per cent of the gross.

Recross-examination:

The Grand Trunk guarantees various obligations of the Central Vermont, as a friendly connection.

The gross operating revenue of the Central Vermont is now on a basis of slightly less than $7,000,000 a year, and they are approximately $2,000,000 short of earning the 6 per cent. Their proposition is that they shall derive that $2,000,000 from increased divisions on the through business, which is about 70 per cent of the total.

Witness would absolutely appreciate their obligation to get such

relief from their local traffic as is possible. That is where they intend to get it, on the economies.

Witness did not mean to be understood that they intended arbitrarily to demand that all the relief they needed should come from the divisions. He understands the obligation is on them to get the balance of it, and make that up by more economical management, and readjusting the different features of their traffic.

281 Witness anticipaes that if any increase in the divisions that might be granted is not adequate, there might be the possibility of some readjustment of interline divisions in New England.

Witness gave the interchange traffic with connections, and including the Grand Trunk, as 1,962,000 tons, and said that he expected to get out of these divisions an increase approximating $1 a ton, which would come back to getting the $1,900,000 out of the interchange traffic. He would not claim any more than was necessary. Witness has no assurances, definite or indefinite, from any interline connections that readjustments of interline divisions in New England will be made. He has nothing except the general discussion that it is in the air, and it is being boiled down further and further. It is necessary, advisable, and proper.

EDWARD G. BUCKLAND, recalled by the complainants, testified further:

Cross-examination:

The figure of $40,213,406, representing the New Haven's interest in the Grand Central Terminal, included in the New Haven's account of the value of its property devoted to railway pur-

282 poses, is made up as follows:

This property is a part of the railway property of the New York, New Haven & Hartford Railway Company held for and used in the service of transportation. It is popularly known as the Grand Central terminal property, and it is divided into four parts. The Grand Central terminal proper, which lies south of the Central line of 59th Street; the tracks of the New York & Harlem Railway Company, which begin at Woodlawn Junction, and terminate at 43rd Street; the Mott Haven yard, which is used jointly by the New York, New Haven & Hartford and the New York Central; and the transmission system, which was constructed and is used jointly by those two companies for electrical generation and transmission on the New York & Harlem line, and in the Grand Central terminal.

The total cost of the Grand Central terminal, at the time these figures were made up—and there have been some additions since; there are continual additions being made—was $64,175,226.50. The proportionate use of that property by the New Haven at that time, and for some time previous, had been 41.5 per cent. It has increased since, but I am using the figures as of the time when these were made up. 41 per cent of $64,175,226.50 is $26,632,194, which

represents the proportionate use of the New Haven of the
283 Grand Central terminal. A similar use is made by the New Haven of the Mott Haven yard, whose cost is $2,238,066.54, 41.5 per cent of which is $987,798. A similar proportion of the distributing system is $1,292,814.

The use of the tracks of the New York & Harlem Railroad Company from Woodlawn Junction to 43rd Street is upon a different basis. That is under a contract, made March 17, 1848, between the New York & Harlem Railroad Company and the New York & New Haven Railroad Company, afterwards consolidated into the New York, New Haven & Hartford Railroad Company, for the perpetual use by both of those companies of all of the tracks of the New York & Harlem Railroad Company for a tollage to be paid upon the passengers, mail, and express carried over the line. A 6 per cent capitalization of that tollage by the New Haven, representing a 40 per cent use of the tracks, amounts to $11,359,600. Those figures aggregate $40,213,406. We did not have access to the figures of the reproduction cost or original cost to date of the line of the New York & Harlem Railroad Company, but the capitalization of our tollage would make the value of that piece of trackage $28,900,000. We believe that that is a conservative value of that trackage.

The best means of comparison that we have is the original
284 cost of the New York Connecting Railroad Company, which has recently been built, and which aggregated slightly less than this cost. We therefore believe that the cost per mile of the New York & Harlem, being through a much more valuable part of New York City, is conservatively stated, if it is no greater than the cost per mile of the New York Connecting, which we know absolutely. That accounts for those figures.

On the question how much of the New Haven's fixed charges is attributable to non-railroad property, the witness said that a good deal of this property was acquired by an exchange of stock of the New Haven road which was then quoted and sold around $200 for the stocks of these street railway companies.

As to that there is no fixed charge. A great deal of it was acquired by an exchange of the convertible debentures of the New Haven road for the stocks of the street railway companies. Some of those—and in fact, a large majority of those convertible debentures—were converted into stock, as to which there is no fixed charge. A large portion of the Connecticut trolleys were acquired by an issue of what were known as consolidated railway debentures, generally bearing a rate of interest of 4 per cent. After those were issued, an offer was made by the New York, New Haven & Hartford Railroad Company to exchange one share of its stock, which was then paying 8 per cent, for $200 of debentures and a very large amount of those debentures were so exchanged. As to such, there is no fixed charge.

From this you will see that it is utterly impossible to
285 segregate the company's investment in these street railway properties, between stock upon which there is only a dividend charge and debentures upon which there is a fixed charge. But,

doing the best he can in that respect, witness wishes to say that the total amount of the investment in the non-railroad and non-steamship properties—he does not suppose counsel wants to go into the steamship properties. The total amount of investment in the non-railroad properties is $116,143,200.81. The witness does not know, and counsel cannot tell, how much of that is represented by dividend payments and how much of it is represented by fixed charges. The accounts are not kept, and cannot be kept, so that there can be a distinction between the two. The average rate of interest paid upon the New Haven's securities is about 4½ per cent. If you took 4½ per cent of $116,000,000, you would get the outside figures. Witness' estimate is that about one-half of that sum, or, say 4½ per cent of $58,000,000, would come nearer indicating the annual fixed charge which the New Haven is required to bear with respect to these properties.

HOWARD ELLIOTT, called as a witness by the complainants, testified:

286 That he is a director and a member of the Executive Committee of the New Haven Railroad, and Chairman of a committee on Inter-Corporate Relations, and in a general way is acting as an adviser to the management in trying to help cure and unravel that complicated situation, connected with the old dissolution case.

He became president of the New Haven on September 1, 1913. Later on Mr. Hustis was elected president, and witness became Chairman. In the summer or autumn of 1914, after the dissolution decree took effect, Mr. Hustis went to the Boston & Maine as president, and witness assumed the title of chairman and president for the New Haven Company, until the spring of 1917, when, under the advice of his physicians, he laid down part of the load, and Mr. Pearson became president.

During the early part of the time that witness was president of the New Haven, he had also responsibility in charge of the Boston & Maine, and Maine Central Railroad. Until the dissolution decree came, witness sat on the Board of the Boston & Maine, and participated in the affairs of that company. He never sat on the Board of the Maine Central except for a limited time. The date of that decree is October, 1914.

287 Witness began railroad work for the Chicago, Burlington & Quincy Railroad Company on July 5, 1880, in the engineering department, and remained with that company until October, 1903. While with the C. B. & Q., he was in the engineering department. He was treasurer of some of their branch roads, about 500 miles; was auditor in charge of the accounts of those same roads; general passenger agent later; afterwards general freight agent of about 1,000 miles; and later general manager of some 1,200 miles of the Burlington properties; and his last connection with the Burlington was as vice-president in charge of maintenance and operation of the entire system.

After he left the Burlington, he was president of the Northern Pacific Road until September 1, 1913, when, at the request of

friends in Boston, Philadelphia and New York, he became associated with this New England situation, with the hope that we all had that we could make a better situation and perform a substantial public service, in putting the New England transportation machine on a sounder basis.

Asked to state in his own way, as a result of his study of the conditions in New England, particularly relating to the New Haven, the Boston & Maine, and the Maine Central, the conditions which exist there with reference to the difficulties of operation, expense of operation as compared with territory outside of New England, and
288 the problems existing there, the witness said:

"Mr. Chairman, and Mr. Examiner, perhaps I should apologize to both you gentlemen for feeling obliged to make some general statement in my remarks about matters which both of you, I think, are more or less familiar with because of the numerous investigations of the New England situation. Yet, I feel I ought to do so in order to lead up to some observations and possibly conclusions that I have about the situation.

"To go back to Mr. Choate's question of my association with the New England situation, I wish to say that it seemed to me to be an intensely interesting problem, and when my friends wanted me to come there, I did come with the idea that there was a chance for a great public service in working out that problem. The gentlemen who asked me had that very much in mind. They felt that, for reasons with which the Commission and the public generally are familiar, there was some excitement in New England over the situation, and that steps should be taken to try to cure that and to make such improvements as could be made in service and the standing of the roads. Men like Mr. Theodore N. Vail, who had the interest of New England very much at heart, Mr. Henry L. Higginson, who was likewise interested, and others, were among those most
289 interested in urging me to come down and help work out that problem. Interests closely associated with the New York Central and the Pennsylvania systems felt the same way, because of the large interchange of business between New England and those two great trunk line carriers.

"It is also interesting to note, as a matter of history, that after looking into the situation and finding that money would have to be spent, particularly on the New Haven Road, to bring it into a better condition and to fund its floating debt, as a condition precedent to my coming, a convertible bond issue of $67,552,000 was devised and underwritten, and the money was practically in hand for the use of the company. That would have funded its floating debt at that time, and given some $25,000,000 that might be used for betterments and additions. It is rather curious to note that today, after 7 years, the debt that we are now arranging with the Government is almost the same amount, about $66,000,000. But that financial plan failed, and great difficulties at once confronted the company. That is merely historical.

"But I came, and my friends were interested in that situation, with this idea of public service, because we all realized and felt what I think the world generally realized and felt, that New Eng-
290 land is an important part of the United States, with a very large population, perhaps 1/13 of the population of the United States, consuming large quantities of raw material that is brought from all other parts of the United States—substantially, I believe, 1/8 of the raw materials of the country. It is a great storehouse of savings, money, and credit, and it seems most desirable, as a national matter, to see that New England is well served with transportation, not only for its own people, but because of the great interdependence between New England and all other parts of the country, and the ramifications of trade with New England that stretch all over the country.

"Now, that difficult situation is here, and all of us have got to confront it. We may wish it was different, that the New England roads could be absolutely self-sustaining; but they must, as a national matter, it seems to me, be sustained reasonably so as to serve not only New England people, but this great interchange of business between New England and the rest of the country.

"The Transportation Act came along after the war, and in a general way, it seems to me it is fair to say that that great constructive measure has, as one of its fundamental principles, that there shall be, within reasonable limits, protection and encouragement of
291 existing railroad systems, provided they are honestly, efficiently, and economically managed and operated. Now, I have seen more or less of operation in different parts of the country, and, of course, saw a great deal of the operations of the New Haven Road for the four years I was in charge of the details; something of the operations of the Boston & Maine—although not to nearly so great an extent—and something still less of the operations of the Maine Central. The conditions under which railroads are operating today all over the country are very difficult; and the New Haven and Boston & Maine, and all the New England roads have to meet those difficulties that are national in character; and, in addition, they have peculiar conditions that accentuate the national difficulties. Those have been pointed out to you pretty largely by previous witnesses, and it perhaps is not necessary for me to touch upon them in any detail.

"My judgment is that, by and large, when you take into account all of the conditions in New England, all of the tools with which they have to work, the New England roads need a good deal of attention in the way of improved facilities for doing business on the most modern basis. Taking into account all of the conditions which they have to meet, all of these facilities, the character of their business, the somewhat different temper, perhaps, of the com-
292 munities where they are so densely populated in many of the regions, I think it is fair to say that the New England roads are managed with absolute honesty. That is perfectly clear. I think they are managed with economy; that is to say, I know the managers, the presidents, and many of the other men, and they are

all imbued with the spirit of trying to eliminate waste and save wherever they can.

"When you come to efficiency, there is always a chance to improve that on any railroad, whether it is in New England or anywhere else, and there is still a chance to improve efficiency in New England. But they have made great strides there in the last few years, particularly before the war. The war dislocated that situation. They are making great strides now, as the war excitement settles down. I think there is no greater lack of efficiency in New England than there is in other parts of the country, unless you get, perhaps, west of the Mississippi River, where the reflex action of the war on the temper of the people, the temper of the working forces, has not been so marked as it has been in the more crowded regions east of Chicago, and particularly east of the Buffalo-Pittsburgh line.

"So, on the whole, my deliberate judgment in that these New England roads are managed with absolute honesty, with great
293 economy, with a liberal amount of efficiency, and with a very earnest and marked tendency to increasing that efficiency. In spite of all that, the New England transportation machine is not getting along. The value is there. The valution of the roads, if you merely take their book values, is very large, and there are good reasons to feel that the final valuation will equal or exceed the book value. Of course, that is yet not a determined question, but there is a value there, and under these protective provisions of the Transportation Act, if it can be carried out, a fair return is justified.

"So, this great question that is before the Commission, before the railroad managers, both east and west of the Mississippi is, 'What can fairly be done about a question which is not purely local to New England?' It is more or less national. I, for one, regret very much that we have had to bring it to the Commission. I know how burdened the Commission is and how desirable it is for railroad managers to adjust their affairs so far as they can without having to appeal to a tribunal that is so burdened as the Interstate Commerce Commission is. But the New England managers feel that, as trustees for their properties, and, to a certain extent, for the public, they ought to lay the matter before the Commission. The managers of the roads west of the Hudson River, as trustees for their properties, and
294 for their public, no doubt feel the same way. These two groups of earnest, sincere men, in safeguarding the interests within their charge, naturally, perhaps, as vigorous advocates, see their side of the question more than they should; and therefore, in order to get it settled, it seems to drift into the hands of the Commission.

"The trunk lines, in conference, have made an offer which indicates that they feel that something should be done. The difficulty with it is that it does not seem to bring about a cure of this unfortunate situation. The trunk lines may be right and the New England lines may be wrong. For that reason, we are rather driven to ask some tribunal to hear the case and consider it.

"It seems inconceivable that under this law some way will not be found to save this New England situation, not only for itself, but

for the interests of the railroads generally and the nation as a whole. The insolvency of one or more of the New England roads would be, in a way, far more than a local calamity. There are maturing, in the next three years, railroad obligations in this country of $526,000,000; $334,000,000 in 1921; $86,000,000 in 1922; and $106,000,000 in 1923. In the present financial condition of the railroad companies of the United States, the handling of those maturing obligations is going to be difficult at best. If the general conditions are such that insolvency must be faced by one or more of the New England roads, what will be the effect on the mind of the investor, when you go to him and ask him to extend his present paper, or go to the general public to sell new obligations at a higher rate in order to take care of this half billion of maturing obligations, of which $334,000,000 are within a 12 months' period? It seems to me it cannot help but be extremely adverse, and that many an investor will say, 'Well, I did hold such and such a bond, but it is due now, and I think I had better take my money.' Some of the large carriers in New England have had to go by the board, in spite of this great Transportation Act, which it was thought would prevent that sort of thing.

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"So, from a national standpoint, on the question of sustaining the credit of railroads as a whole, of enabling maturing obligations to be funded on as low a basis as the present difficult money conditions will permit, it seems to me it is very important to try to save this situation.

"There is one other question of a national character which today we hope, of course, is very remote, and that is the question of national defense. New England and its railroads ought to be kept in shape so that if ever there was any danger of another war, that whole situation would be in first class condition to meet it. That is a very remote contingency, but I was talking with one of the Commissioners the other day about that subject, in connection with the Pacific Coast, and he brought up the matter, the importance of seeing that the railroads on the Pacific Coast are properly protected and developed in case any foreign war should come.

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"Some of these divisions, as you know, and as I suppose has been testified to here, have been in effect all the way from 25 to 30, or even 40 years, and the conditions are very different now from what they were then. If these divisions should, in the wisdom of the Commission, be changed in any way, they would be changed because of the changed conditions, changed, in part, because of these national aspects of the situation.

"So much, Mr. Chairman, for what I call the national view of it. I want to recite, briefly, something about the New Haven, because I am somewhat familiar with that, and with the steps that the board of directors took from the autumn of 1913 until now, in trying to place that property in a position to perform its duty to the public and give something to its security holders. The company was paying dividends when I came here, and I recommended to the board that we cease doing that. The last dividend paid, was, I think, about September, 1913. It was declared before I was

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a member of the board. Since then no dividends have been paid, so that the 25,000 or 30,000 stockholders of the New Haven Road, for 7 years, have had no return; and, if you assume they are entitled to some return, 5 or 6 per cent., indirectly they have made a very substantial contribution to the working out of the New England problem in that part of New England occupied by the New Haven Road, because a 6 per cent. dividend for that period would be something over $60,000,000.

"The employes, on the other hand, have fared better. The payroll for the year ending December 31, 1914, was 28½ million dollars, and the earnings were something like $71,000,000. The payroll was nearly 40 per cent. of the earnings. That is for the rail system. The payroll for the year ending December 31, 1920, estimating in part December, was $83,730,000, and the earnings for that period were nearly $132,000,000. The payroll was approximately 65 per cent. of the earnings. I merely give those figures to show that certain great currents that increase expense have operated in such a way as to be entirely beyond the control of directors or managements.

"1914, as you will all remember, and 1915, were not very
298 good years. In 1914, with the greatest effort at saving and economy in every way, the company had a net operating income of $14,600,000 and met its obligations and had only $268,000 left. In fact, it was touch-and-go, during that year, whether the company could sustain itself; but the board felt then, as it has felt continuously, that it was better for the situation as a whole to avoid the dislocation that would be occasioned by a receivership. In the year 1915, by the introduction of some of these methods of operation which are being adopted by all railroads, in other words, of trying to get a little more in each car, a little more behind each engine, and the elimination of unnecessary train service, etc., the net operating income was brought up to $18,502,000, and the balance, above all charges, was $2,307,000. This same earnest effort at economy and efficiency was pursued in 1916, and the net was brought up to $22,381,000, with a balance above all charges of $4,315,000, in that case, something like 2½ per cent. on the stock. In 1917 the New Haven began to feel the war effects. It felt them earlier than some other parts of the country, because of the fact that Connecticut, Rhode Island, and southern Massachusetts had the factories and the facilities for producing many of the materials that the Allies needed. So,
299 that year we began to feel the increasing expense due to the war, the constant strikes, the labor unrest, etc. But, even so, the company that year had $20,480,000 above its taxes and expenses, and after all charges of every kind, $2,404,000.

"I am reciting these figures, Mr. Chairman, because it showed that the efforts of the directors and the management were beginning to bear fruit. The company was eliminating waste. They were adopting newer methods of operation. They were spending every red cent they could get out of earnings or sales of property for making improvements, and they were paying down their floating debt. Business was so slack in 1915, at one time, that there were 203 en-

gines in first class order, laid up ready for business; but the onrush of the war business was so great that those 203 engines were quickly absorbed in 1917 and 1918; and while the company had made some improvements and betterments, and added some equipment, it was not sufficient to meet the difficult situation.

Now, the Government, as you know took over the railroads December 31, 1917. Various reasons may be given for their taking that step. One reason obviously was that, particularly east of the Pittsburgh-Buffalo line, and north of the Ohio River, the money situation confronting the railroads, with the rising tide of
300 prices, the congestion, the labor troubles, etc., made it seem almost impossible for the managements to succeed in doing what was absolutely necessary. However, the Government did take over all the railroads, including the New England ones, and the conditions of the war and the centralized management resulted in a relation of expenses to earnings that entirely changed the situation confronting the New Haven directors. They had gone along and had gotten to a place where, if the war had not come, it seems as if they might have worked out the salvation of this particular road. This is more or less typical of the others in New England. In fact, the Government put the stamp of its approval on the earning power of the New Haven by stating that they would pay, for the use of the property while they had it in charge, something over $17,000,000 a year, which, with its non-operating income, gave it enough to pay every obligation of every sort, preserve its solvency, and have something over $3,000,000 a year, which would be continued for betterments and additions.

"The war conditions in 1918 produced a net operating income to the New Haven of only $7,769,000, dropping from the high point of $22,381,000 in 1916. In 1919 they had dropped to $6,929,000, and in 1920, for I think eight months of my figures, they ran behind $8,342,000. At any rate, there would be a large
301 deficit for the year 1920, in meeting expenses and taxes.

"Now, the causes that brought about that tremendous dislocation of the relation between income and outgo were almost entirely beyond the control of the directors or of the management. They have courageously faced the situation, feeling that they were not only acting for the security holders of the New Haven, but they were acting for the New England public, in a way, in trying to prevent a serious dislocation, and in trying to give better service. With the help of the Government, and with sales of various pieces of property, as they could be sold, there has been added to the property some $50,000,000 of additions and betterments in this 7-year period, practically all of which are in the direction of making the production of transportation easier with a given amount of energy; that is to say, heavier bridges so that heavier power can be used, greater side track capacity, so that greater trains can be handled; better freight yards, so that business can be classified and despatched with less delay; and, as Mr. Pearson has already testified, there was a large increase in the amount of transportation produced and a lesser volume of train miles used to produce it. But, in spite of

that, the change in the wage basis, the change in the fuel
302 costs, the change in material costs, and all of the things that flowed out of the war, Government control, and the Adamson law, have produced a condition where the road is not self-supporting today.

"When I found it was desirable for me to lay down part of that load up there, the directors, after careful consideration asked Mr. Pearson to come there. He had worked with me in the West, and I knew him very well. The reason for it was that he was a very experienced operating man. He understood, as well as almost any one I know, this question of trying to make the maximum use of a piece of track, the maximum use of each car, the maximum use of each engine, and the details of train movement. In fact, the American Railroad Association has made him chairman of what they call their transportation section, which has to deal with technical questions of transportation, through the medium of the American Railroad Association. Mr. Pearson also had had a very wide experience as a designer and constructor of those appliances that are necessary in a modern railroad for getting these maximum results out of each of your cars and engines and tracks.

"Now, although I was educated as an engineer myself, and have a tremendously high regard for the profession, it is a fact that
some times an engineer will be a very good designer of a
303 yard, or of a roundhouse, or of a freight house; and yet it will not be as economical to maintain and operate as it ought to be. Mr. Pearson, because of his knowledge of operation and his wide experience as a constructor has had an unusual ability to design the additions and betterments on the New Haven, so that they are reasonable in their design, and they are very effective when they come to be used. So, we asked him to come, and mapped out a general program of improvements such as I have outlined, and a great many of them are done. Some of them are not done. The large classification yard at Cedar Hill, and the large classification yard at Providence are not fully in effect, but all of these improvements, in another year, if they can be finished, will still further increase the capacity of the New Haven to serve New England, and its ability to move the business, both freight and passenger, with a minimum amount of physical energy. Now, if the relation between what you get for the service performed and what you pay out for that physical energy can be restored to anywhere near what it was in 1916, or even in the test period, I feel quite sure that the solvency of the New Haven Road can be sustained.

"Speaking more in detail about some of the difficulties that confront that road, as well as the Boston & Maine and other New
England roads, these figures, I imagine, have already been
304 put in evidence, but I looked up the subject when I was making a slight preparation for this statement to you, and during the test period I find that the New England roads, as a whole, had to spend, for what is called conducting transportation, 39.8 cents out of each dollar of earnings, while the roads west of the Hudson River spent 35.4, or a difference of 4.4 cents. Since

Federal control it has run, for the New England roads, 51.2, and the other roads 44.6, a spread of 6.6 cents.

"Now, to my mind that increase in the spread does not indicate a lack of efficiency. It indicates rather that these peculiar conditions in New England under the Adamson Law and under the higher scale of wages have borne more heavily on the New England roads, with their short hauls, their numerous stations, their great number of interior junctions, and with no heavy blocks of tonnage, than they have on the lines west of the Hudson River.

"I do not mean to say that the lines west of the Hudson River have not, on parts of their own systems, some of the conditions that are somewhat similar to those in New England. Parts of Pennsylvania, parts of New Jersey and parts of New York have frequent stations, junction point and difficulties; but I think it is fair to say that in nearly every case there are some compensations that
305 do not exist in New England. There is some long-haul business that does not exist there; there are some great blocks of tonnage that can be handled with a minimum amount of expenditure of physical energy. In fact, I noticed that the Pennsylvania road just a day or two ago put out one of their interesting press notices in which they said that in the month of September they had 10,000,000 tons of coal which averaged 53 tons to the car. Well, that is a splendid bunch of business for handling with a minimum amount of physical energy. Roads that do not have, perhaps, a long haul, like the coalers, have a consolidated coal business that helps to offset any peculiar conditions they may have in New Jersey and Pennsylvania. But New England, with its miscellaneous tonnage and no consolidated blocks, cannot get the same trainload as the trunk line. It is practically an impossibility. The average figures that I looked up for a recent period showed 492 tons for the New England roads and 857 tons per train for the lines west of the Hudson River. Yet the New England roads are constantly making improvements in their trainload. The Central New England, one part of the New Haven, the accounts for which are kept separate, in September showed 636 tons on that particular piece, but that is because it has the coal coming in through Maybrook.

306 "Then the New England roads, and particularly the New Haven, have a much higher proportion of branch line and local train service than roads like the New York Central, Pennsylvania, Baltimore & Ohio, and the coalers.

"Another burden that has been pointed out to you is that these New England roads have to pay a freight charge on fuel and on many articles of iron and steel, rather higher than roads west of the Hudson River. Their station costs under the higher wage scale, and because of the frequency of the stations, are very burdensome.

"These various units of cost, Mr. Chairman, I could comment on, but, as I understand it, all of that element in this problem has been developed to you in considerable detail, and it does not seem necessary for me to do so.

"From my knowledge of the Boston & Maine I know that Mr. Hustis and his associates are proceeding along the same lines that I have outlined about the New Haven, in trying to make these improvements in the physical characteristics of the road and in equipment that will permit the greater use of each car and of each engine. I am not so familiar with the situation on the Maine Central, but I have talked with Mr. McDonald about it, and I know that he and his associates are keen in the same direction, and I know some of
307 the directors of that road very well, and know how keen they are to press the management in those directions.

"I sincerely believe, as a director of the New Haven road, that the managements of the New England roads and the directors of the New England roads are thoroughly alive to their duty under the law, apart from any self-interest they may have, to be honest, efficient and economical. They are honest and economical; they are efficient with the tools they have; they are increasing that efficiency; they are cooperating with the roads west of the Hudson River to try to arrange the flow of business to produce the greatest economy; and I do believe they are in need of help, and that that help is justified from the national viewpoint of the situation and from the importance of sustaining these particular roads in the interest of the New England public. And in saying that I do not mean that the New England roads and the New England people should not exhaust every avenue they have of curing the difficult situation there among themselves. If the intra-New England rates can stand an increase, that is all right, but in making it there should be a safeguarding of the rates between New England and points outside that may be lower than the proposed intra-New England rates, and on through rates the parity or the differentials now in effect ought to be substantially preserved. Of course the New England roads should struggle
308 to get more and more economies, and it is possible that there will be within a year a saving in prices of fuel and materials, but it will not come within the next six months in large amounts, because most roads have a considerable stock, and there is also a possibility of a readjustment of wages if the present business conditions continue.

"But the need for relief to the New England roads is immediate, and if the Commission in its wisdom should afford some measure of relief, the power rests, of course, with the Commission to change that measure of relief if and when the absolute necessity of it should cease through changing conditions such as I have outlined.

"As I stated earlier, these divisions have been in effect for a great many years; they were framed up at a time when railroad operation and management and net earnings were easier than they are today, and it may well be said that a revision of those divisions in the light of the present conditions is fully justified.

"I do not know, Mr. Chairman, that there are any more observations that I care to make on this situation, except to renew my statement that, as one director of the New Haven road, I am very sorry that we could not work this thing out among ourselves rather than to have to burden the Commission with it."

309 Witness was not railroading in the East 20 to 40 years ago, but from such knowledge as he has, he should say there are many conditions that are very different. The per diem situation in particular is entirely different today from what it was even 20 years ago, and in discussing the question of per diem many of us took the position—and witness did too—that it was unwise to attempt to settle the per diem question (that is, to settle the rate) because of the difficulties and disabilities of the New Haven road, and that the rate ought to be fixed for the use of a car on the same basis for New England as for the country at large, and if that rate became unduly burdensome on New England, as it is, that disparity should be cured through the division of the freight rate; and that is a very particular element that enters into the changed conditions over what the conditions were when the divisions were made 20 or 30 years ago.

When witness was actively in charge of the New Haven road, the per diem was a very heavy burden. One year the per diem charges on the New Haven ran up around $4,000,000. That was when they had a very bad congestion, and in their effort to do all of the business that the New England people wanted done, they made, perhaps, what was an error in policy, by biting off more than they
310 could chew. They had as many as fifty-five or fifty-six thousand cars on the road at one time, which gorged it, and the business could not be handled promptly or satisfactorily, so the per diem ran up very much.

The rate of $1, which has been fixed recently, is going to be more burdensome than the rate that year, which, as witness recollects, was 60 cents, and after that was raised to 90 cents; and through no fault of the New England roads—witness means if the car comes in and goes to a given destination and moves back with what you might call celerity; no fall-down anywhere—because of the very short haul the per diem is serious. 7 or 8 days to return a car means 7 or 8 dollars. That may mean quite a substantial proportion of the earnings on that given car. That per diem bears very heavily on the short-haul New England roads. Something like 92 or 93 per cent of the New Haven's business terminates on their rails, which is very serious on the New Haven particularly. They have to unload it to get rid of it. They are not a bridge line. These conditions, particularly per diem, fuel cost and increase of wage, bore more heavily on New England than on roads outside. These conditions for New England have arisen since the divisions were established.

In witness' judgment these conditions have affected New England more seriously than roads elsewhere.

If you use the word "munitions" to mean all kinds of things that the Army needed, not confining it to powder and shot, dur-
311 ing the war, to a very large extent in the earlier periods of the war, New England was the source of supply. Witness could not give any views as to percentages; witness does not know; but the great onrush in war orders in the early part of the war, 1915 and 1916, seemed to affect New England before it became a burden on other parts of the country. Later the same difficult conditions that obtained in New England in 1916 and 1917 began to obtain around

Buffalo and Pittsburgh and Youngstown and Baltimore, and along the Delaware River; but New England was a very large base of supplies for all kinds of things that were necessary, or thought to be necessary, for the use of the Allies, and then when we went into the war the same thing, of course, was true of the supplies necessary for our armies.

It is witness' impression that there were a great many plants in New England which either were adapted or could readily be adapted for the production of supplies necessary for the support of an army, and that was done.

Cross-examination:

We are all in search of light, and the best way out of a very difficult situation. Every avenue of help should be exhausted by
312 the New England roads before appealing to others. The witness has a statement that the managers of the New Haven prepared, taking a constructive year ending October 31st, if we assume a certain falling off of business which seems to be upon us, and no change in rates and other costs, there would be a deficit of around $17,800,000. That is not at the rate of $2,000,000 a month, because that would be $24,000,000. But the New Haven has just recently been showing as bad as that. But this is made on a constructive year.

It is possible to scrape up—witness does not say it can be done—it is possible to obtain revenues from other sources to a limited extent: What is called the elimination of low-trip tickets is one source; the complete application of the so-called Anderson scale is another; a change in the lighterage rates in New York, something which the trunk lines are also interested in, is another; some increases in local commodity rates, and some increases in joint commodity rates. Those items are estimated to bring in a possible revenue of $1,700,000.

The only other source of revenue, in addition to that, is to increase the passenger rates. Whether the Commission, the state commissions and the representatives of the New England public, in this crisis of the next 6 months or 12 months, would be willing to have
an increase in passenger rates, witness does not know; but,
313 personally, as a means of bridging this chasm into which these roads may fall, witness is inclined to think that effort ought to be made; that we ought to get more during this crisis out of the passenger business, and that that is an unfortunate burden that falls to a certain extent upon the users of the New England roads. They are their roads, supporting their territory in this crisis, and perhaps they ought to help to that extent. In other words, this problem has got to be solved, as witness looks at it, by the cooperative efforts of the people in New England by paying more rates if it is possible for them to do so. It is a question whether their local freight rates can go up very much more. A count was taken the other day at Bridgeport, and there were 2,000 motor trucks crossed the river up there in one day. Three tons to the truck is 6,000 tons. They do not run every day, because there are stormy days, but if they ran 250 days of the year there is a possible

million and a half tons of freight. Between Boston and Brockton at one time there used to be a way freight train service of about 45 cars a day. That has all gone to motor trucks now. None of that 45 cars of business apparently is moving. So there is quite a diversion of certain classes of business from the New Haven.
314 The same thing would apply in part to the Boston & Maine territory, and a higher rate might make more of it, witness does not know. That would be a question of judgment for Mr. Campbell and his associates. But the problem has got to be solved, as witness says, by getting the rates, making some increases in the freight rates, some increases in the passenger rates, getting the minimum amount of help from the trunk lines to prevent insolvency; the additional economies, the fall in the prices of coal and other things which will come in time, but which may not be sufficient in the next six months' period to prevent a crash. All those things, in witness' judgment, should be pressed forward, certainly, for argument and discussion, and all of them should be used; because the New England roads do not want to call on others to help them except in so far as it is just, and there is a large element of justice in the fact that the New England railroads and New England are one partner to the transaction in any movement of freight from outside into New England or from New England outside. There are two partners, and for reasons that have already been produced here by Mr. Cunningham and others, the effect of the Adamson Law and the wage increase, and one thing and another, in costs, is higher in New England on its share of the through haul than it is outside—that is, in witness' judgment it is—so that the
315 two partners ought to make a rearrangement, witness thinks, of the whole transaction.

Redirect examination:

Referred to the testimony of Mr. Pearson, that his revenue from local freights showed about 6 cents per ton mile and on his New England interline business it was about 4 cents, but from his divisions on interchange business only about a cent and a half, witness said that to his mind this indicated that the revenue from divisions is inadequate. The witness is very sincere in feeling that the changed conditions that have developed in the last 25 years, and particularly in the last 5, under the wage scales and the methods of doing business, the 8-hour day and the rules and regulations, justify an enlarged division for the New England roads, and that business is nearly 70 per cent of the New Haven's business.

In the case of the New Haven road, their passenger business being nearly half of their total, they got an increase of only 20 per cent on that plus the Pullman surcharge, whereas in the case of the trunk lines the passenger business is not so large a proportion of their total, so that the 40 per cent increase in the freight rate in trunk line territory applied to a larger proportion of the total revenue than in the case of the New Haven road, and to a lesser
316 extent with the other New England roads. On the other roads the proportion of freight business is much greater to the total than is the case with the New Haven.

GEORGE T. JARVIS, called as a witness by the complainants, testified:

That he is vice-president and general manager of the Rutland Railroad, and has held that position for 19 years. His railroad experience dates back to 1876. His earlier connection was with the Pennsylvania Road in the mechanical department, where he learned the machinist's trade and served as foreman for some period; subsequently in the transportation department, variously connected. He served for some 7 years on the Duluth, South Shore & Atlantic and Pere Marquette; some 3 years with the Baltimore & Ohio, the Lake Erie & Western, receiver and general manager of the Louisville, Evansville & St. Louis; for a short period General Manager of the Wisconsin Central, and then to the Rutland.

About 51 per cent of the stock of the Rutland road is owned equally by the New Haven road and by the New York Central. The balance is in the hands of the public.

317 Asked to state in his own way the nature of the territory through which his road operates, where its line runs, the kind of business it does, and the financial condition in which it finds itself, the witness read a little statement as follows:

The people in the western half of Vermont, numbering about 115,000, and in northern New York between Rouses Point and Ogdensburg, numbering about 100,000 are almost wholly dependent upon the Rutland Railroad for transportation. This territory is largely agricultural, but in it there are many important industries. Its agricultural products are marketed in New York City and other cities in New York State as well as in New England. Its manufactured and mineral products are carried to all parts of the country. Because the Rutland Railroad runs through a country which is principally agricultural, it may be said that it operates through a sparsely settled country. But for this very reason, it is important to the industrial and more thickly populated territories, which require its products. It is an important link in transportation between New England and New York City and vicinity in the East and points west and south of Norwood, N. Y. The Rutland Railroad with other roads is the shortest of three lines from Boston to Montreal, and is one of the principal lines between New York City and Montreal.

318 The existence and successful operation of the Rutland Railroad is vital to western Vermont and the part of northern New York through which it runs, and is important to New England and other parts of New York State. Small as compared with the many larger roads, yet it is one of the arteries through which commerce from all parts of the country passes.

The Rutland Railroad has 397 miles of main track, with branches extending—

(1) 15 miles from Leicester Junction to Ft. Ticonderoga.

(2) 6 miles in length extending from Alburgh, in northern Vermont, to connection with Canadian roads at Noyan Junction, Province of Quebec.

It extends at the south from Bellows Falls, Vt., where connection is made with the Boston & Maine Railroad; from Chatham, N. Y., where connection is made with the Boston & Albany and New York Central; from North Bennington, Vt., where connection is made with the Boston & Maine, to Ogdensburg, N. Y., on the St. Lawrence River, passing through Manchester, Rutland, Middlebury and Burlington, Vt.

The principal interchange is between the Boston & Maine at Bellows Falls, at the south, and the New York Central at Norwood, N. Y., at the north. Other interchange points are Petersburg Junction and North Bennington with the Boston & Maine; Rut-
319 land, Ft. Ticonderoga, Rouses Point and Mooers Junction with the Delaware & Hudson; Burlington and Alburgh with the Central Vermont; Norwood, N. Y., with the Norwood & St. Lawrence Railroad; Moira and Malone, N. Y., with the New York Central; Rouses Point, N. Y., with the Grand Trunk, Central Vermont and Napierville Junction railways; Noyan Junction, P. Q., with the Grand Trunk and Quebec, Montreal & Southern railways; New Haven Junction, Vt., with the Bristol Railroad.

Prior to 1916 the Rutland Railroad owned and operated a boat line carrying principally package freight and grain through the Great Lakes between Ogdensburg and Chicago, Milwaukee, Detroit and Cleveland. The Interstate Commerce Commission, by an order made under the Panama Canal Act, required the Rutland Railroad to dispose of this boat line. Since that time the Rutland Railroad has been deprived of this ex-lake traffic via Ogdensburg, resulting in loss of considerable revenue.

The total value of products manufactured by industries along the line of the Rutland Railroad amounts annually to about $83,000,000. This figure does not include rough lumber, cheese and butter, as no accurate data is available in respect to those. Neither does it include fluid milk, which amounts to about $6,000,000 a year to the
320 producers. Most of this milk goes to New York City. Knit goods and clothing and textiles amount to about $21,000,000 a year and paper and pulp to about $12,000,000. Other important products valued at more than $5,000,000 annually each are:

1. Machinery and castings.
2. Marble and stone.
3. Furniture, woodenware and toys.
4. Condensed and evaporated milk.
5. Confectionery and chocolates.

As can be readily seen from the list, the manufacturers along the Rutland Railroad are in competition with industries in nearly all parts of the country and the products go to all parts of the country.

The Rutland Railroad is operated under adverse climatic conditions such as heavy snow, deep frosts and extreme cold weather.

The Rutland Railroad has four so-called engine divisions and on

three out of the four helper engines are required to handle satisfactory train tonnage. On two of these, that is, (1) the division between Rutland and Bellows Falls and (2) the division between Ogdensburg and Alburgh, helpers are used regularly.

The financial condition of the Rutland Railroad requires
321 immediate action, otherwise there will be a sad failure in its operation—the result, witness should say. The establishment of the 8-hour day and the standardization of wages have increased the operating expenses so that the average transportation ratio for the months of September and October, 1920, was 44 per cent as against 36 per cent for the same months in 1916, and the operating ratio was 87.78 in 1920 against 63.12 in 1916.

The character of the train service is such as to make it impossible to apply the 8-hour day to freight train operation with any economical results. Over 50 per cent of our freight train service consists of local freights. This company has no freight trains running between terminals without stopping, all of its through freights being pickup and drop trains. The whole line is single track, making it impossible to get many of the trains over the road within the 8 hours on 12½ miles an hour speed basis, on account of side-tracking for opposing trains. 70 per cent of our freight trains accrue penalty overtime under normal conditions and during the winter months this situation is aggravated.

One reason why the standard wage schedules penalize the Rutland so heavily is because we previously had differential wage scales satisfactorily negotiated by the management and the employees,
322 and many of these schedules were below the basic minimum established by the standard rates of pay, so that in addition to the increases granted above the basic minima the Rutland had to stand the additional increases to first bring the pay up to the minima established. Following the standardization of wages it has been necessary to increase the number of local freight train units on the road by 50 per cent to avoid paying penalty overtime.

Increased wages, standardization of wages, coal costs, etc. have placed this company in a position where even without the decrease of traffic which has noticeably appeared during the last few months, it would barely earn its fixed charges, and with the decrease of traffic there seems to be no way to prevent the revenue being inadequate by a substantial amount to meet fixed charges.

There is important milk transportation over witness' road in New York City daily. They run four milk trains that go entirely through to New York City and to New England. The Vermont marble quarries are on his line and served by his road.

An army post, Ft. Ethan Allen, is located near Burlington, about 5 miles from witness' road. It is important at the present time and there is a considerable detachment of troops there. There are
323 industries in evaporated milk, chocolate and confectionery, which have developed within the past 10 years. The chocolate factories are at Burlington, and the milk condensing plants are at various points in northern New York and in Vermont. Witness' road runs up through those Vermont valleys, and there is no other

possible method of transportation, by steam or trolley, for those people there, except witness' road, on the west side of the State.

Cross-examination:

Witness has not very carefully examined the exhibits introduced, but if they show in round figures that his road requires about $1,500,000 increase in freight revenue to produce a net return of 6 per cent on the property investment account, that is correct. If the exhibits show it, it is correct that the total revenue of the Rutland Railroad on traffic interchanged with trunk lines is in round figures $1,500,000.

Witness does not know what proportion of $1,169,000 revenue on interchange with the New York Central Railroad is derived from his milk traffic to and from New York City.

Witness believes they are asking in this complaint that the divisions between his road and the New York Central be
324 changed upon milk to New York City, but that Mr. Cassidy can speak upon that better than the witness, because that is a purely traffic proposition. Witness has not had to deal with that end of it. He is relying wholly upon his traffic representative and his accounting representative who prepared these statements. Witness cannot tell whether he included his interchange with the trunk lines which moves to and from Canada in this trunk line interchange shown on the statement of Mr. Brigham, but such traffic between Canada and the Trunk Lines is almost nil as compared with the total interchange traffic. It is witness' contention that they should obtain from the decision in this case additional revenue of $1,500,000, which would be approximately $1 per ton on every ton exchanged, and in that was included the tonnage interchanged with the New York Central; and the witness would assume that that includes the milk and other traffic between the New York Central and his line.

Asked whether he would expect that the $1,500,000, if he obtained it in this case, would come directly from increase in his division with his trunk line connections, or if he expected to obtain any part of it by some arrangement with other New England lines, the witness said:

"Part of it, the major portion of it, I assume, would come from our through trunk lines, and such proportion as we can obtain
325 by an adjustment of the divisions now applying in New England on intra-New England traffic."

Witness has no particular adjustment with the trunk lines in mind. Witness has no particular adjustment with the New England lines in mind.

WILL E. OSBORNE, called as a witness by the complainants, testified:

That he is the auditor of the Rutland Road. That the capital stock outstanding is: common, $188,900, preferred, $8,955,400.

The total capital stock is $9,144,300, and the bond issues are $9,716,000; equipment obligations, $720,500; making a total capitalization of $19,580,800. That is less than the tentative valuation submitted by the Bureau of Valuations, which is for land, not including carrier lands, $1,638,927; cost of reproduction new, $24,154,233, or a total valuation of $25,793,160.

For the 8 calendar years, 1910 to 1917 inclusive, the net income of the company aggregated $3,431,067.72, an average of $488,883.46, or 4.69 per cent on its outstanding capital stock.

For the three calendar years just prior to Federal control, 1915, 1916 and 1917, the net income aggregated $1,853,080.84, or an average per annum of $617,693.61, or 6.75 per cent per annum on the outstanding capital stock.

326 During the period of Federal control—the years 1918 and 1919, and the two months of 1920—a deficit is shown as follows:

In 1918, $431,011.63; in 1919, $263,418.25; and in the two months January and February, $116,019.35.

Those figures are combining the corporate and Federal to produce a year that would be the same as or comparable with the previous years, and eliminating the income from the standard return.

The ratio of operating expenses to revenues in 1910 was 70.55 per cent.

In 1911, 72.24 per cent.
In 1912, 75.45 per cent.
In 1913, 76.89 per cent.
In 1914, 77.34 per cent.
In 1915, 69.64 per cent.
In 1916, 67.40 per cent.
In 1917, 75.32 per cent.
In 1918, 96.74 per cent.
In 1919, 92.94 per cent.

And for the two months, January and February, 1920, 102.51 per cent.

Including 1918, and down to the present time, witness' road has been earning a deficit. In 1918 it was $431,011.63. In 1919
327 it was $263,418.25; and in 1920, for the two months, $116,019.35.

They made an estimate of revenues and expenses for the year ending October, 1920, by taking the year 1919, as a normal year. They excluded from it any extraordinary charges, such as wrecks or unusual charges; advanced the costs by adding the wage increases, increases in coal, material, and so forth; have assumed that the traffic would be the same; have advanced the revenues in accordance with all of the increases, and it shows the following results:

Operating revenues, $6,063,796.

Operating expenses, $5,534,355.

Net revenue, railway operations, $529,441; with an operating ratio of 91.26 per cent.

The taxes, equipment rents, joint facility rents, net, and deducting net fixed charges, show an estimated loss of $7,510.

The figures for September and October showed an unexpected decrease in traffic, so that, assuming that those same decreases went through, the result would be a much greater loss.

There was a decrease in freight traffic of approximately 19 per cent. This was in all kinds of freight business.

GEORGE A. WICKS called as a witness by the complainants testified on cross-examination that Exhibit 10 gives the total interchanged traffic of the Bangor & Aroostook including that with the Canadian National and the Canadian Pacific. The exhibit shows that the Canadian government gets 106,000 tons, the Canadian Pacific 74,000, and the Grand Trunk a small amount. The total is 501,000 tons. The Canadian lines get approximately 35% of this total interchanged tonnage, leaving 65% for the trunk lines other than the Canadian roads. All the Canadian Pacific traffic goes into C. F. A. territory. Out of the total trunk line traffic interchanged in both directions about 80% moves on joint rates. This includes both Canadian Pacific and trunk line interchanged. Including only the trunk lines, the figure would be a little less than 80%. 65% of the total interchanged would be about 325,000 tons. Of that about 265,000 tons moves on joint rates. The principal commodities that move on joint rates are news print, potatoes, lumber and forest products, starch, slate, and a number of miscellaneous commodities. Of these the most important is lumber, next, potatoes, and next news print. Some of these commodities move on commodity rates all the way through, and the bulk of them moved on commodity rates as far as the through rate is concerned up to Maine Junction, Brunswick, and the proportion beyond on the full class rate, excepting on lumber. That was the condition on lumber up to the time of federal control, but when they put on the 25% increase, with a maximum of 6¢, that reduced the proportion of both, so that the proportion west of Brunswick was something below the class rate. The combinations on Maine Junction are joint through rates, issued as through tariffs. They are built by adding to the through rate to Maine Junction or to Brunswick what the Bangor & Aroostook chooses to put on. That is retained by the Bangor & Aroostook. Of the 265,000 tons witness would say in rough figures that about 240,000 or 250,000 tons move on commodity rates as distinguished from class rates. Witness is not prepared to suggest at this time, as a traffic man, any basis for the division of those rates as rates.

328 GEORGE S. HOBBS, called as a witness by the complainants, testified:

That he is vice-president in charge of traffic, Maine Central Railroad Company; office, Portland, Maine, and has been with the Maine Central since October 20, 1897. He began his railroad service February 1, 1878, as clerk in the passenger department, Eastern Railroad, in Boston. After that he was clerk in the engineering de-

partment; paymaster; after that he served as chief clerk and auditor of a small railroad in the West; afterwards superintendent of car service, Boston & Maine Railroad, for 4 years; then went to the Southern Railway as auditor during the reconstruction period, and served about 4 years there, after which time he began the service with the Maine Central, first as general auditor, then as comptroller, and subsequently, beginning January 1, 1908, as vice-president.

Asked to state in his own way the situation of his railroad, the nature of its traffic, the tonnage that it interchanges, and with whom, and the financial situation in which it finds itself at the present time, the witness said:

The Maine Central Railroad Company, with headquarters at Portland, directly operates 1216 miles of railroad, of which 654 miles is owned, and 547 miles leased; it also operates about 15 miles under trackage rights. It controls by ownership of the entire capital
329 stock the Portland Terminal Company, which owns and operates extensive terminals at Portland, Me., used jointly by the Maine Central Railroad Company and the Boston & Maine Railroad. This affords opportunity for the interchange of both passenger and freight traffic for all points in central and southern New England and to the west and south. It also owns, and operates separately, 125 miles of 2-foot narrow gauge railroad—two railroads, which are feeding lines to the main system. These narrow gauge lines are included among the complainants in this case, originating traffic which finds its markets in territory west of the Hudson River.

The main lines of the Maine Central Railroad extend from Portland to Vanceboro, Me., at the boundary with New Brunswick, where connection is made with the Canadian Pacific Railway for all points in the maritime provinces. Connection is made at Northern Maine Junction with the Bangor & Aroostook for all points in northern Maine. The main lines and secondary lines and branches, including our narrow gauge lines, extend through nearly every county in the state and serve a considerable diversity of commercial interests, as will be hereafter explained. There is also a secondary line operating northwesterly from Portland through Maine, New Hampshire and Vermont, to Lime Ridge, Canada, known as
330 the Mountain Division, affording connections for western traffic with the Canadian Pacific Railway and the Grand Trunk Railway.

The divisions on through freight in effect with our connections west of the Hudson River have in many cases been in effect for a long period of time. They quite generally date back to the time when rental of freight cars interchanged was based on mileage instead of per diem, or upon per diem rates very much less than at present, and previous to the time of the standardization of wages, which has been a greater tax upon the Maine Central Railroad than has been the case with most roads.

It being our claim that our operating costs have been increased more than the roads west of the river by the changes referred to, and other advances in operating charges, including cost of fuel for locomotives and taxes, we submit to your honorable Commission that

these facts in themselves, when proven, constitute a valid basis for the support of our claim for increased divisions on through freight.

Diffusion of Traffic.

The following figures will illustrate the diffusion of freight traffic received from the western connections. During October, 1920, we received 3,010 loaded cars via principal junctions, of which
331 1,477, or nearly 50 per cent., were hauled less than 100 miles each. These cars were handled to 431 destination stations from these junctions besides being switched at several intermediate junctions in most cases, all of which service adds materially to the cost of transportation.

Comparison of Divisions with Local Rates.

As representative of divisions east of the gateways, accruing to New England, I beg to quote the following:

Bangor to Chicago via Mechanicsville:

First class	1.57½
New England revenue	.549
Local rate	1.15½
Percentage of local rate	47.5

Chicago to Bangor via Newport, Vt.:

First class	1.64½
New England Revenue	.542
Local rate	1.060
Per cent	51.1

The percentage of revenue accruing to New England on low grade freight rated as sixth class is better than first class, but the foregoing examples may be regarded as fairly representative. Further examples more fully showing detail of divisions of rates to and from representative points on our line are shown upon exhibits
332 which will be submitted.

Nature of Manufactures.

Our manufactures, which consist principally of cotton and woolen goods, boots and shoes, wooden goods and paper and pulp, are remote from many of their markets and are in competition with other producing sections, such as New York state, Canada and the West, and it is, therefore, necessary in making rates for their outward movement, as well as for the raw material and fuel inbound, to give careful consideration to this situation.

There are other products of our territory which to a large extent seek markets beyond our line, such as lumber and other forest products, lime, granite, and the products of agriculture, including potatoes, apples, hay, livestock and dairy products.

We have also a considerable output of canned goods, including fruit, vegetables and fish, which find markets all over the United States.

In all these cases our relatively greater distance from many of the markets is a handicap upon our producers.

Conditions of Operation.

Out of the 1,216 miles of railroad operated, we have only about
300 miles of main line, the balance being made up of second-
333 ary lines and branches where the operating conditions per unit
are more expensive by reason of many heavy grades, light traffic, high cost of fuel, and our long and severe winters. The percentage of our overhead or bridge traffic is comparatively small, it being about 1,420,000 tons out of 8,000,000 tons (or about 18 per cent.) for the year ending October 31, 1919.

The balance of our freight traffic which originates or terminates on the Main Central Railroad is distributed at a comparatively large number of stations, about 250 in all, besides a considerable number of prepay stations and private sidings, which necessitates a rather expensive train and switching service including handling at intermediate junctions and classification of break-up yards en route.

Distribution of Traffic.

Of the 8,000,000 tons of freight handled by our railroad per annum, approximately 31 per cent. is local to our own line, 32 per cent. is interline New England traffic, and the balance of 37 per cent. is interchanged with trunk line and Canadian roads.

Payroll.

The annual payroll of the Maine Central Railroad was in 1917, in round figures, $6,300,000.

The corresponding annual payroll at the present time ad-
334 justed to meet the award of the Labor Board is in amount, in round figures, $15,300,000.

This shows the very great increase of $9,000,000, equivalent to 143 per cent., meaning that our annual payroll upon the present basis is nearly 2½ times what it was in 1917.

The increases already granted in rates and fares has resulted in largely increasing our operating revenues per mile of road from $10,124 during the test period to $20,321 per annum under the present rate basis, but at the same time operating expenses have increased from $7,136 to $19,054 per mile of road, per annum, and this without any responsibility on our part for the increase. It will thus be seen that during the test period our net operating revenue per mile of road per annum was, in round figures, $3,000, whereas at present it is less than $1,300 per mile, which will not pay our fixed charges.

We gained under the increased rates and fares in Ex Parte 74 ap-

proximately $6,000,000 per annum; but taxes, wages, fuel and other expenses have practically absorbed this entire increase—so that the deficit in operation of the property while under Federal control, which in 1919 amounted to $44,200,000, has not yet been fully provided for.

335 Conclusions.

1. We believe our railroad to be a necessity in the territory through which it runs.

2. The public demand good service and expect to pay for it at a reasonable price.

3. We are undertaking to reduce our operating expenses to the greatest possible extent.

4. We are endeavoring to so develop our passenger train revenue as to secure from it a fair share of the cost of operation of our property.

5. The balance of revenue needed to operate and maintain our railroad, including a fair return upon the investment, must be made up from our freight traffic:

(*a*) By an upward revision of such rates as may now be termed sub-normal.

(*b*) By additional divisions from our connections as shown by the fact that the divisions which we at present receive are far below the rates for like distances which have been determined to be reasonable.

It can readily be seen that with the conditions outlined it would be unfair did we not secure by adjustment with our connections, or otherwise through the direction of your Honorable Commission, a fair division of the revenue on such through freight as we handle,
336 and we ask that our conditions be given your careful consideration in order that the best interests of the public, and of our security holders, may be served.

Recess.

GEORGE S. HOBBS resumed the stand and testified further:

Asked to state with whom they have interchanged traffic, and how their divisions on the trunk line traffic interchanged, have been established, and how old they are, the witness said:

"I will answer that, Mr. Choate, if you please, by first reading a memorandum with regard to the trunk line and C. F. A. divisions.

"1. Trunk line divisions: The Maine Central Railroad has joint through rates from points east of Portland to and including Brunswick, Bath, Lewiston, and Mechanic Falls, Me., and from the entire Mountain Division—Portland, Me., to Lime Ridge, Quebec. This territory constitutes the Rockland Division group to and from which

percentage divisions apply in connection with Trunk Line territory subject to terminal deduction before prorating, for the Maine Central Railroad, 2 cents per one hundred pounds.

"Between points on the Maine Central east and north of
337 Lewiston, Mechanic Falls, Brunswick, and Bath, Me., and Trunk Line territory, there are, generally speaking, no through class rates, traffic moving on combination rates based on Brunswick, Me., the Maine Central receiving its proportional rates beyond Brunswick in addition to division of the Brunswick rate as outlined above.

"There are some joint through rates from points east and north of the Brunswick group, which are divided by allowing the Maine Central proportional arbitraries in addition to the regular Brunswick basis of divisions.

"2. Central Freight Association territory divisions: On Central Freight Association traffic the Boston rate applies to and from Maine Central stations east of Portland to and including Rockland, Mt. Desert Ferry, Washington Junction, Milford, Norridgewock, Rumford, Me., and the entire Mountain Division. This territory is divided into two division groups—the Rockland group, which includes in addition to the territory above described as the Rockland group in connection with the Trunk Line traffic, stations beyond Bath to Rockland, Me., the balance of the Boston rate territory being known as the Ellsworth Division group. The Maine Central Railroad receives terminal deductions of 2 cents per 100 pounds, before prorating in connection with both Rockland group and Ellsworth
338 group percentages.

"Between territory beyond the Boston rate group and Central Freight Association territory there are no joint through class rates, rates being made by combination, basing on Washington Junction, Milford, Oakland, and Rumford, Me. The Maine Central receives in division these arbitraries added to the Boston rate, balance being divided on Ellsworth division basis described above. There are some joint through commodity rates to and from points beyond the Boston rate group in division of which, the Maine Central has agreed proportional arbitraries, the balance being divided on Ellsworth group basis described above.

"As an exception to the above, on traffic interchanged with the Grand Trunk Railway, at Mechanic Falls, Me., division is made on basis of allowing the Maine Central agreed specifics instead of percentage basis to and from points on the Rangeley Division, Mechanic Falls and north.

"3. Prorating mileages. The Maine Central Railroad receives as prorating mileage for the Rockland division group 117 miles. Actual mileages to representative points included in the Rockland division group are as follows:

"Portland to Lewiston, Me., 37 miles.
339 "Portland to Mechanic Falls, Me., 45 miles.
"Portland to Bath, Me., 38 miles.

"Portland to Lime Ridge, P. Q., 208 miles.
"Intervale to Lime Ridge, P. Q., 147 miles.
"Coos Junction, N. H., to Lime Ridge, P. Q., 95 miles.
"The above applies in connection with both Trunk Line and C. F. A. territory, and in connection with C. F. A. territory the Rockland group includes Rockland, Me., a distance of 86 miles from Portland, with an allowance for the Bath Ferry of substantially 30 miles.
"The Maine Central Railroad receives as prorating mileage for the Ellsworth division group 179 miles, which is the actual distance from Portland to Mt. Desert Ferry. The actual mileages to other points in the Ellsworth division group are: Portland to Bangor, Me., 137 miles; and the folowing branch line points: Portland to Rumford, Me., 86 miles; to Farmington, Me., 84 miles; to Belfast, Me., 129 miles.
"The general basis as above outlined for Rockland and Ellsworth division groups applies in connection with traffic routed via the Boston & Maine Railroad, Rotterdam Junction and Mechanicsville gateways also on traffic via Harlem River and Maybrook gateways except that on a certain portion of the traffic the New England lines
340 receive specific proportions in the subdivision of which the Maine Central Railroad is allowed prorating mileages for Rockland and Ellsworth groups substantially as above outlined.
"On traffic via the Canadian Pacific Railway, Newport, Vt., and St. Johnsbury, Vt., the divisions are upon an arbitrary basis not related to mileage, being so constructed as to yield the line south of Newport approximately 30 per cent of the Chicago rate for the Rockland group and 32.5 per cent of the Chicago rate for the Ellsworth group.
"Divisions via North Stratford and Grand Trunk Railway are upon a basis somewhat similar to the divisions in connection with the C. P. Ry. via Newport, the Maine Central receiving on Chicago traffic 25 per cent for the Rockland group and 27.5 per cent for the Ellsworth group.
"Southern traffic via the Virginia gateways generally speaking is divided on specifics for the New England lines, which are subdivided on prorating mileages, as stated above.
"On Canadian traffic, which includes the territory between Montreal, P. Q., and Port Arthur, Ontario, the division of Maine Central territory is the same as outlined above for C. F. A. traffic, but the basis of divisions in many cases allows the Maine Central less than an actual mileage prorate would yield.
341 Revenue on transcontinental traffic eastbound is divided east and west of Chicago or Mississippi River gateways on percentage basis, the subdivision for lines east being on same basis as for C. F. A. traffic above stated. The revenue on transcontinental traffic westbound is divided on basis of allowing lines east local rates to Chicago and Mississippi River gateways, which are subdvided on regular basis.
"Before putting in the exhibits, I will say that these freight division bases are represented by statements of divisions as follows:

"1. Trunk Line: (*a*) through joint rates and divisions Lewiston, Me., to Scranton, Pa.

"(*b*) Combination rates divided as made and then on through per cents. Rockland, Me. to Philadelphia, Pa., Bangor, Me., to Allentown, Pa.

"2. Central Freight Association territory: (*a*) Ellsworth division group (Westbound). Rumford, Me., to Chicago, Ill.

(*b*) Ellsworth division group (Eastbound). Chicago, Ill., to Bangor, Me.

"(*c*) Combination rates, divided as made and then on through per cents. Machias, Me., to Detroit, Mich.

"(*d*) Rockland Division group. Lewiston, Me., to Cincinnati, Ohio.

342 "3. Southern territory (from Brunswick Rate group): Lewiston, Me., to Atlanta, Ga.

"4. Canada (from Ellsworth division group):

"Bangor, Me., to Montreal, P. Q.

"5. Transcontinental (from Ellsworth division group): Bangor, Me., to Seattle, Wash."

The first sheet of witness' Exhibit No. 45 shows divisions according to two routes, one, via Mechanicsville and the other via Maybrook, from Lewiston, Me., to Scranton, Pa. From Lewiston, Me. to Scranton, Pa., via Mechanicsville, is 494 miles divided 296 miles for New England and 198 miles west. The distance via the Maybrook route is 586 miles, divided 381 miles for New England and 205 miles west. The through rate is 95 cents. New England gets 3.8 cents per ton mile, or 66.1 cents per 100 pounds on that traffic, and the Anderson scale would have given $1.04. The New England gets 63½ per cent of the Anderson scale, via Mechanicsville, and 62.7 per cent via Maybrook. The lines west of the Hudson get 39.1 per cent of their local rate, and 44.2 per cent via Maybrook. New England earnings, first class, are 4.46 cents per ton mile via the Mechanicsville route, and 3.79 on the Maybrook route. The carriers west of the junction receive 2.9 cents per ton mile via Me-
343 chanicsville, and 2.8 cents on the Maybrook route. The New England carriers get 9.2 per cent on first class more than the mileage prorate, and the lines west get 9.2 per cent less than their mileage prorate.

Traffic moving from Lewiston to Mechanicsville, goes to Portland, and is probably made into a through car at Portland for some junction on the Boston & Maine Railroad, or some junction on the New Haven lines, and thence it goes through to destination. In the Lewiston group there is the territory between Portland, on the one hand, for trunk line territory, and Bath, Brunswick and Lewiston on the other hand; and the entire mountain division from Portland to Lime Ridge, Canada.

The New England carriers participating in that transportation,

by way of Mechanicsville, are the Maine Central and the Boston & Maine, and via Maybrook, the Maine Central, Boston & Maine, New Haven, and Central New England. The freight would go through Portland, Ayer Junction, North Hampton, and then one intermediate junction on the New Haven road, before it arrived at Maybrook. It might not have to be reclassified at each one of those junctions. They make certain through cars. Witness cannot tell whether that would go into a through car the whole distance or whether it would go to some central point like Ayer, and then be reclassified through.

344 The second sheet is the sheet showing class rates and divisions from Rockland, Me., to Philadelphia, Pa., through the Waverly Transfer, and also through Communipaw. The total mileage via Waverly Transfer is 514 miles, of which 415 miles is with the New England lines, and 99 miles with the Pennsylvania Railroad. The participating New England carriers are the Maine Central, the Boston & Maine, and the New Haven, including the steamer Maryland, or some boat transfer. That would not follow the same route as described with reference to the first sheet. That would take the same route to North Hampton, and then would go from there through New Haven, and the western New Haven junction. Via Communipaw, the same number of New England carriers would participate, but via the Bound Brook route to Philadelphia, the Central New Jersey and the Philadelphia & Reading would participate. That is 405 miles in New England and 91 miles the other side. That would follow the same route as via Philadelphia, except the transfer at the western junction of the New Haven road. There it would be transferred to the Central Railroad of New Jersey instead of to the Pennsylvania Railroad. It would go from Rockland to Ayer Junction to North Hampton or to New Haven or from Ayer Junction to North Hampton and then to New Haven and then to Harlem River. The first class rate is $1.14 for 415 miles, in one case, and 405 in the other, and the New England lines receive 96.9 and 97.2 cents. Under the Anderson scale they would get
345 $1.17½, each way. Under the sixth class there is no difference from the Anderson scale of 33 cents. The New England divisions are 100 per cent of the Anderson scale. On first class they get 82.5 per cent on one route, and 82.7 on the other. The lines west get 37.2 per cent for first class, and 26.8 per cent in the sixth class, via Pennsylvania Railroad; and via the Bound Brook route, 36½ per cent of first class, and 28.8 per cent of sixth class. Witness understands that they are including in the New England portion of the transportation and revenue the transportation from and to the Jersey shore, which includes the floatage around New York. The New England lines receive 4.9 cents first class via the Pennsylvania Railroad, and 1.9 cents sixth class per hundred pounds in excess of the mileage prorate. The lines south and west get less than their mileage prorate by 4.9 in one case and 1.9 cents in the other.

In these tabulations, witness has taken into acount the arbitrary which the New England carriers receive, so that everything they get is reflected in these figures.

The next sheet shows the class rates and divisions from Bangor, Me., to Allentown, Pennsylvania. This sheet shows the information first, via Communipaw, N. J., and secondly, via Mechanics-
346 ville, N. Y. The through distance via Communipaw is 545 miles, divided, for the New England lines, 456 miles; and carriers west of junction, which is the Central of New Jersey, 89 miles. In the other case, via Mechanicsville, N. Y., 696 miles, the distance divides, for the New England carriers, 396 miles, and the distance west, 300 miles. The through rate, first class, is $1.14, and sixth class, 38.5 cents. In that case, the rate via the long route, through Mechanicsville, is made to meet the rate via the short route, through Communipaw.

In that particular case the revenue on first class to the New England carriers, via the Communipaw route, is 97.2 cents. The Anderson scale, for like distance, would be $1.21½. They secure, in that case, 80 per cent of the Anderson scale on first class. On sixth class they secure 97.1 per cent. Via Mechanicsville they secure 66.2 cents per 100 pounds first class and 22.9 cents sixth class. The Anderson scale would be $1.15½ first class and 32½ sixth class. They secure 57.3 per cent of the Anderson scale first class and 70.5 per cent sixth class. The revenue west of the junction, via the Communipaw route, is 16.8 cents first class, and 5½ cents sixth class. The class rates west of the junction are 55½ cents first class and 21 cents sixth class; so that the per cent of revenue west of the junc-
347 tion is 30.3, first class, and 26.2 sixth class, while for the other route, the class rate west of the junction is 74 cents first class and 28 cents sixth class, of which the per cent west of the junction is 64.6 per cent in one case, and 55.7 per cent in the other.

The amount in cents per 100 pounds accruing to New England carriers in excess of mileage prorate, via the first route, is 1.8 cents per 100 pounds, first class, and 8/10 of a cent per 100 pounds sixth class. For the second route it is 1.3 cents per 100 pounds first class and 1 cent sixth class.

The next sheet shows the divisions between Rumford and Chicago. That is made up for four routes, via Jersey City and the Pennsylvania Railroad; via Mechanicsville and the Erie route, via Mechanic Falls and the Grand Trunk route; and via Newport, Vt., and the Canadian Pacific route. The per cent of the New England division to the Anderson scale is shown there. Via the first route, first class, it is 56.3 per cent, and sixth class, 69.1 per cent. Via the next route, the Erie, it is 49.5 per cent first class, and 61.9 per cent sixth class. Via the Grand Trunk, it is 43.1 per cent first class, and 53.1 per cent sixth class. Via the Canadian Pacific route, it is 50.3 per cent first class, and 63.9 per cent sixth class. The per cent
348 of revenue west of the junction to their local rate, which is, via the first route, 58 per cent first class and 56.6 per cent sixth class. Via the Erie, it is 81.1 per cent first class, and 79.2 per cent sixth class. Via the Grand Trunk, it is 83.4 per cent first class, and 83.3 per cent sixth class. Via the C. P., it is 66.6 per cent first class and 64.9 per cent sixth class.

The first route is the Maine Central to Portland, Boston & Maine to North Hampton; New York, New Haven & Hartford to the western junction, three carriers. That would be through Portland, Ayer Junction, North Hampton, New Haven, and to the delivery to Harlem River, with floatage around to the Jersey shore. The second route is through Portland, Ayer Junction and thence direct to Mechanicsville over the Boston & Maine Railroad. The third route is only one carrier, to Mechanic Falls. The fourth route would be the Maine Central to St. Johnsbury, and thence the Boston & Maine to Newport; two carriers.

The next sheet is class rates and divisions from Chicago to Bangor, eastbound, via Jersey City, via Mechanicsville, and via Newport. Taking the Jersey City route first, the through rate is $1.64½ and the New England proportion is 69 cents. The Anderson scale for the same distance, first class, would be $1.24. The per cent
349 of the New England division to the Anderson scale is 55.7 per cent for New England, while the per cent of revenue west of the junction to the local rate is 60.6 per cent.

On sixth class, via the same route, the per cent of the New England division to the Anderson scale is 68.4 per cent, while the per cent of revenue west of the junction to the local rate is 58.9 per cent. On the Mechanicsville route is 49.6 as compared with 71; on sixth class, 61.2, as compared with 68.5.

The line from Machias over the Maine Central Railroad is from Machias up to the Bar Harbor Branch of the Maine Central. It is one of their light lines, one of their secondary lines. The line is full of grades and curves, and a very expensive line to operate, with light traffic, so that whatever rates they get down there, they are, in themselves, to a certain extent, non-compensatory. They can haul not more than 10 or 12 loaded cars. There is a regular business of small volume. Machias is on the coast, but the railroad is 2 or 3 miles back of it. It is to some extent a fishing port. There is quite a volume of lumber business there, and some canning. On the line between that and their main line at Mt. Desert Ferry, there is some lumber business, granite business, and a little canning business.
Canned goods move from Machias to Chicago, more than
350 anything. On the first class freight, which, of course, is expensive to handle, we get 72.4 per cent of our Anderson scale up to Rotterdam. On sixth class, from Machias to Detroit, the percentage of the New England division to the Anderson scale is 101.1 per cent, but there is nothing that moves. They were called upon to put that in to make their statistics uniform with the other roads, but there is no sixth class business, at least, of any consequence, over that route.

The next sheet shows Lewiston to Cincinnati, three routes. On the route via Jersey City the per cent of the New England division to the Anderson scale is 55.8 per cent, while the sixth class is 68.6 per cent. The lines west get, in one case, 54.4 per cent, and on sixth class 52.5 per cent.

It may be said, in connection with these statements in regard to the percentage of the class rates west of the junction, that the basis

of class rates west of the junction is entirely different from the basis of class rates in New England.

In the second set of figures, the New England lines get on first class 47.5, and the lines west 81.9. On sixth class, the New England lines get 59.7, and the lines west 80.6.

351 The third column shows a new route by North Stratford, which traffic moves from Lewiston and other points in the same group to Portland, if it is less than carload freight, for transfer, and thence it moves over their mountain division, through the White Mountains, to North Stratford, New Hampshire, where they deliver to the Grand Trunk Railway. They have through routes via North Stratford in connection with the Grand Trunk Railway, for nearly all points in Central Freight Association territory. It comes back to the United States at Detroit.

The next sheet shows traffic moving south to Atlanta. There is the same situation there as in the others, that on the first-class freight the New England Lines get very much less than the Anderson scale; 55.8 on first class, and 79.4 on sixth class, while, on the Mechanicsville route, they get 42.8 first class, and 62.4 sixth class.

The per cent of revenue west of the junction to the local rate, via Jersey City, is 79 per cent first class and 80 per cent sixth class; while, via Mechanicsville, it is 86.2 per cent first class, and 85.8 per cent sixth class.

In cents per 100 pounds the New England carriers receive, via Jersey City, 2.4, first class, less than a mileage prorate, and 2.5 cents less sixth class. Via Mechanicsville, it is 3.7 less, first class,

352 and 2.4 cents less sixth class. The lines south get correspondingly more.

The next is from Bangor to Montreal, via Newport, 419 miles, of which the New England lines get 311 miles, and the Canadian Pacific 108 miles. The amount in cents per 100 pounds accruing to the New England carries less than a mileage prorate is 5.8 cents first class, & 1.7 cents sixth class, the Canadian Pacific getting corresponding amounts in excess.

The last sheet is on transcontinental business from Bangor to Seattle, showing two routes, one via Jersey City and the Pennsylvania Railroad, and the other via Newport, Vermont, and the Canadian Pacific Railway. The distance via Jersey City is 3,582 miles, of which 466 is in New England, and 3,116 west. The through class rate, first class, is 616.5, of which the revenue to the New England carriers is 66.1 cents per 100 pounds, while the Anderson scale for the same distance, first class, is $1.24. They receive, in that case, 53.3 per cent.

The per cent of revenue west of the junction to the local rate is, first class, 89.3 per cent. The ton mile earnings to New England are 2.84, while the ton mile earnings to the carriers west of the junction are 3.52 cents for the longer haul. The amount accruing to the New England carriers is 14 cents less than the mileage prorate, first class.

The amount in cents per 100 pounds accruing west of the

353 junction in excess of the mileage prorate is 14 cents.

In general the relationship of first to sixth class in New England, under the Anderson scale, is 100 to 28, while, as a general

basis, witness understands that the rates to and from Trunk Line territory and perhaps C. F. A. territory, are 100 to 33½, approximately.

That accounts for some of the differences between the comparisons of first class rates and sixth class rates. The Anderson scale has been set up for New England on a certain basis, for southern New England, and 110 per cent of the southern New England rates, for Zone B, which includes the Maine Central Railroad. It has been witness' idea that the Zone B proportions, considering the nature of their territory, are not sufficiently high; but until it is changed, to an extent, the Anderson scale for Zone B roads should be considered as one of the elements in considering what should be a fair division for New England on through business.

Asked whether, in view of his experience, and the study that he has made of these divisions, in his opinion, the divisions that his road is receiving out of this through business, are fair and equitable, the witness said:

354 "It has seemed to me that the divisions, as now made, result in the through business to and from trunk line territory and territory west and south of trunk line territory, not bearing its fair share of the burden of operation."

Cross-examination:

Asked to tell how the rate from Lewiston to Atlanta is made, the witness testified that Lewiston is in the Brunswick division group, and that southern traffic, via the Virginia gateways, generally speaking, is divided on specifics for the New England lines, which are subdivided on prorating mileages.

Referred to Mr. Brigham's exhibit, which was said to show that the Maine Central revenue on tonnage interchange with trunk lines is $4,066,000, and asked what part of that $4,066,000 is made up of percentage divisions, and what part is made up of arbitraries or other additions which they make themselves to the rate, and which are deducted before prorating, the witness testified that he had not those figures with him, but had a statement which shows on the traffic originating or terminating on the Maine Central Railroad, to and from trunk lines, exclusive of Canadian traffic, what their tonnage is and what their approximate revenue is.

355 Asked to assume a figure of $4,460,000 as correct, as representing the net railway operating income needed by the Maine Central to earn 6 per cent on its property investment on the basis of the year ending June 30, 1920, as adjusted, and whether they expected to get that out of a revision of their percentage divisions with the trunk lines, the witness said:

"No, sir. We only expect to get a part of it from that source."

Witness expects to have that property investment taken into consideration in this 1.48 computation.

Asked whether they expect one of the other New England lines to get the money which is thus produced, the witness said:

"Wel, if the New England lines receive what we think belongs to us, namely, that 1.48 per cent, I have no doubt but what there will be a way found to put our part of it into our treasury. I am not sure that you are right in that conclusion, that if we should get that whole 1.48 per cent, that it would give us a full 6 per cent in New England. It will give us, as I understand it, approximately $24,000,000. As I understand it, $24,000,000 will not give New England a full 6 per cent on its property investment account."

Whatever is given, they hope to get their proportion on
356 some such basis as that. The proportion to their traffic interchanged with trunk lines will be one of the considerations; but it is not necessary for them to get it all from the lines west of them on the traffic interchanged with the trunk lines. If the whole $24,000,000 comes into New England, there are other ways of dividing it around equitably. In other words, this revenue on traffic interchanged with the trunk lines is not wholly to be the determining factor in what they receive.

Redirect examination:

All arbitraries received by the lines west, or by the New England lines, are represented in witness' tables. The transcontinental rates westbound, are made from large groups of origin in the East. The witness understands that there is practically one blanket for all of New England on transcontinental traffic; that the same rate that runs through to Boston extends practically to all points in the State of Maine, all over the Maine Central. Witness thinks this group is a good deal larger than New England. The rates to and from the Maine Central Railroad, to and from C. F. A. territory, are made with reference to groups of points on witness' road. The rates to
Trunk Line territory are on a different basis, they are grouped,
357 but different groups.

The Anderson scale is what witness would call a block mileage scale. It is what is ordinarily called a distance or a mileage scale.

Witness' thought in regard to changes in these divisions the Maine Central Railroad, or the New England railroads, on these transcontinental rates, is that possibly a larger proportion of the through rate should be allotted to the lines east of the gateways, Chicago, and the Mississippi River, and then, having allotted a larger proportion of the through rates to the eastern territory, then, whatever divisions, or whatever changes in divisions are set up for the lines east of Chicago, the New England lines would secure a corresponding change in the transcontinental rates.

Their claim before the Commission is asking for greater divisions on the business to and from Trunk Line and Central Freight Association territory. If their petition is granted, that will automatically give them more on transcontinental business.

There might be a place where the line should be drawn as to how far those transcontinental rates would extend, and very likely, in a proper revision of the transcontinental rates, they ought to be cut

off either at Brunswick, Maine, or some other point, so that
358 the line east of Brunswick, Maine, would then receive its arbitraries.

The distance the witness uses is from the individual points that he named.

Asked for his judgment of what kind of a rule or measure or yardstick the Commission could apply in trying to measure out this last advance, the witness said:

"It has been suggested that in order to give the New England roads immediate temporary relief at this time, a reasonable terminal arbitrary might be granted, to be deducted from the proportion of joint freight rates accruing west of the western New England gateways, as follows:

"Low grade traffic such as coal, iron ore, clay, sand and gravel ..... 1¾¢ per 100 lbs.
Grain and grain products, forest products, other mill products, pig iron, bloom and brick ..... 2½¢ " " "
All other freight traffic ..... 5½¢ " " "

"In connection with this proposition a suggestion has been made that these arbitraries might be so modified as to permit certain minimum divisions to be left for the Trunk Line carriers where deductions of the amounts named would unduly limit their revenues in particular.

"This suggestion if carried out would in a measure defeat the purpose for which these arbitraries are to be granted, namely,
359 to afford the New England lines as a whole, on traffic interchanged with the trunk lines as a whole, the full amount of the temporary relief needed.

"With respect to a permanent basis of revised divisions it will readily be seen by the exhibits submitted that there is need of a complete restatement of the many divisions now in effect in the eastern group on interchange traffic. It is my belief that a satisfactory method of accomplishing this result could be the establishment of a new basis of percentages; not those in effect during Federal control, but a revised set of consolidated percentages that will recognize the needs of the New England carriers and at the same time be fair and reasonable so far as their western connections are concerned. From time to time these percentages could be revised in order to meet the varying revenue requirements of the several interested carriers. Even a casual inspection of the many freight tariffs in effect in trunk line as well as New England territory and inter-territorially would impress one with the importance of a very thorough rate revision, in order to provide for uniformity, and a proper relationship of rates throughout the entire territory. This work to be satisfactorily and promptly carried out should be given prompt and thorough investigation by a competent committee who may deal with
360 the subject with authority, in cooperation with the traffic officers of the interested railroads, and the Commission. In

order that the subject may be dealt with intelligently, there should be the same information compiled regarding the freight tariffs effective in Trunk Line territory and inter-territorially as in New England territory.

"Now that, in general, Mr. Chairman, is an idea that I have, by which we might work this situation out. But, it would mean not only a very thorough restatement of the divisions now in effect, but also of the rates on which they are founded."

The points selected by witness in giving what he calls typical groups and divisions, large shipping points—except Machias—that is, Lewiston, Bangor and Rockland, are fairly representative. They are neither the smallest points nor the largest points. They are not on the extreme East, but, by and large, an average distance between the extreme west and extreme east points.

The principal industry at Rockland is lime, and fishing. At Bangor there is some fishing, and there is a general business in the Bangor district, consisting of paper, pulp, and fishing. Bangor is quite a centre, and especially for the paper and pulp industry. The territory within 10 or 15 miles of Bangor contains quite a number of pulp and paper mills. The Lewiston district contains a very
361 large boot and shoe industry, and a large textile industry.

JOHN L. DEMPSEY, called as a witness by the complainants, testified:

That he is the assistant general freight agent of the Central Vermont Railway Company. About 25 per cent of their total revenue is from passengers, and probably 72 or 73 per cent is from freight. The principal tonnage originating on the Central Vermont is granite and stone, lumber, forest products, condensed milk, canned fruits and vegetables, lime and talc, and they have paper and manufactured boards, and pulp. They have a boat line from New York to their southern terminus, New London. The Main Line is north from New London, Conn., with a bridge over the Boston & Maine, from Brattleboro to Windsor, to St. Johns, Quebec.

The witness has prepared sheets showing their divisions for typical points and typical routes. He cannot say how far back the divisions date. It is ancient history, anyway. Witness has been with the road since 1907. They were in existence before his time.

Witness has no knowledge as to whether they are 10 years old or 20 years old, or more.

Complainants' Exhibit No. 46, shows, as the first point,
362 from St. Albans to Allentown, Pa. It shows first and sixth class. The through class rate, first class, is $1.01½. Witness' line receives 8 mills per 100 pounds less than their mileage prorate. On sixth class, the through rate is 34½ cents, and they have 2 mills per 100 pounds less than their mileage prorate. The roads west get correspondingly that amount in excess.

The next route is from Montpelier, Vt. to Allentown. The through rate is the same, and witness' road gets 1.2 cents more than

the mileage prorate on first class, and 5 mills more than their mileage prorate on sixth class. The roads west get correspondingly that amount beneath their mileage prorate.

The next is from Sharon, Vt., about 14 miles north of White River Junction, Vt. Witness's line receives 13 cents more than their mileage prorate on first class and 7.6 cents more on sixth class.

From Palmer, Mass. to Allentown, Pennsylvania, they get 2.3 cents more than the mileage prorate, on first class; and 1.1 cent more on sixth class.

On divisions from St. Albans to Newark, N. J., they get 16 cents less than their mileage prorate first class, and on sixth class they get 5 cents less.

363 From Montpelier to Newark, witness' lines get 16 cents less than their mileage prorate, first class, and 5 cents less than their mileage prorate on sixth class.

From Sharon, Vt. to Newark, witness' lines get 21 cents per 100 pounds less than their mileage prorate first class, and 9 cents less than their mileage prorate sixth class.

From Palmer, Mass. to Newark, they get 17 cents less on first class, and 7 cents less on sixth.

From Williamtic, Connecticut, to Newark, they get 16 cents less first class, and 7 cents less sixth class.

Exhibit No. 47 shows points in C. F. A. territory. As a general thing, it shows that into C. F. A. territory they get more than their mileage prorate, and the lines west get less. But, in most cases, witness' line has a rather small mileage.

Exhibit No. 49, between points on witness' road and points in southern territory, via the Harlem River gateway, shows that on a very large number of those divisions they receive less than a mileage prorate.

From St. Albans to Atlanta the ton mile earnings to the New England carriers are 2.4 cents; ton mile earnings to carriers west of junction, 3.7 cents, on first class. On sixth class, ton mile earnings to New England carriers, 9 mills; ton mile earnings to carriers

364 west of junction, 1.6 cents.

The New England haul is 443 miles, and west of the junction the haul is 1,020 miles.

The next point is Montpelier, Vt., to Atlanta. The ton mile earnings to New England carriers, first class, are 2.7 cents; to carriers west of the junction, 3.4 cents. On sixth class, ton mile earnings to New England carriers, 1 cent; to carriers west of junction, 1.5 cents.

To Savannah, the ton mile earnings to New England carriers, first class, are 2.4 cents; to carriers west of junction, 3.2 cents. On sixth class, ton mile earnings to New England carriers, 9 mills; to carriers west of junction, 1.6 cents.

Montpelier to Savannah, the ton mile earnings to New England carriers, first class, are 2.7 cents; to carriers west of junction, 2.9 cents. There the New England haul is 389 miles, and west of the junction, 856 miles.

From Montpelier to Birmingham, Alabama, the New England ton mile earnings first class are 7.9 cents; to carriers west of junction,

2.8 cents. On sixth class, to New England carriers, 3½ cents; to carriers west of junction, 1.2 cents.

On the Montpelier division witness' line hauled only 98 miles, and the others, 1,394 miles.

Sharon to Birmingham, ton mile earnings to New England
365 carriers, first class, 5.3 cents; to carriers west of junction, 2.8 cents. Sixth class, New England carriers, 2.3 cents; carriers west of junction, 1.2 cents. The mileage there is 146 to the Central Vermont, and 1,394 to carriers west of junction.

From Palmer, Massachusetts, to Birmingham the ton mile earnings to New England carriers, first class, are 2.6 cents; carriers west of junction, 2.6 cents. Sixth class, New England carriers, 1.2 cents; carriers west of junction, 1.2 cents.

Exhibit No. 48 shows from Central Vermont points to C. F. A. points. From St. Albans to Youngstown, Ohio, the haul of witness' road is 42 miles, and west of the junction, 713 miles. The ton mile earnings to New England carriers, first class, 15.2 cents; to carriers west of junction, 2.2 cents. Sixth class, New England carriers, 5.2 cents; carriers west of junction, 7 mills.

From Palmer, Massachusetts, to Youngstown, Ohio, the ton mile earnings to New England carriers, first class, are 2.6 cents; to carriers west of junction, 2.1 cents. The mileage for the Central Vermont Railway is 279 miles, and for the Grand Trunk and its connections, 713 miles.

From St. Albans, Vt., to Detroit, the ton mile earnings to New
England carriers, first class, are 21.6 cents; to carriers west of
366 junction, 2.2 cents. Sixth class, New England carriers, 7.6 cents; carriers west of junction, 7 mills. The Central Vermont's haul on that division is 42 miles, and that of their connection, 595 miles.

From Palmer to Detroit, the ton mile earnings to New England carriers, first class, are 3.3 cents; carriers west of junction, 2.3 cents.

Exhibit No. 50 shows the business between the Central Vermont and points in western territory. That is transcontinental business.

From Montpelier, Vt., to Spokane, Washington, the ton mile earnings to New England carriers are 9.4 cents; carriers west of junction, 3.9 cents, first class. Sixth class, the ton mile earnings to New England carriers are 5 cents; to carriers west of junction, 2 cents. The New England mileage is 98, and carriers west of junction, 2,759.

From Palmer to Spokane, Washington, the ton mile earnings to New England carriers, first class, are 3.3 cents; lines west of junction, 3.9 cents. Sixth class, New England carriers, 1.7 cents; lines beyond New England junction, 2 cents.

Roughly, on about half of the Central Vermont's business with western territory, the Central Vermont gets less than its mileage pro
rate, and on the other half it gets something more, depending
367 on whether their haul is a short one or a reasonably long one. Where they have a very short haul they get more than their mileage prorate, and where they have a haul of 100 miles or more, they get something less than their mileage prorate.

The Central Vermont runs north and south somewhat east of the Rutland road, and there is, to some extent, a range of mountains between them. They do not serve the same territory. The population of the State of Vermont at the last census was around 350,000. There is no other north and south means of transportation in the territory served by the Central Vermont north of the Massachusetts line, except to some extent for the reason that the Central Vermont connects with the Rutland Railroad at Burlington, Vt. The Central Vermont furnishes a lot of local service to local communities along their line that are not otherwise served. They have an army post on their line, Ft. Ethan Allen, Vermont, which is not served by any other railroad. The Central Vermont does not go into Plattsburg, New York.

Cross-examination:

The Central Vermont exhibits show the division to that Trunk Line junction but witness believes that that is also the Central Vermont junction in every instance.

Witness has no suggestion to make as to any specific method of dividing these rates different from the method now in vogue that will be satisfactory to his company, except to concur in the
368 view expressed by Mr. Eaton. He has no separate views as to a method of dividing these rates that are covered by his exhibit, as a permanent solution, other than the one he has suggested.

D. S. BRIGHAM, recalled by the complainants, testified:

Direct examination:

Witness called attention to the following minor errors in the record of his testimony:

In Exhibit 1 the column headed "Annual Average for 28 months of Federal Control" should read "26 months."

In Exhibit 15 which shows the percentages of the tonnages of the New England roads on interchange business to their total tonnage, and also the percentage of tonnage and revenue interchanged with each intermediate connection, it was found that in the last column in the second part of this statement, the percentages had not been correctly figured. A corrected exhibit was therefore submitted.

In Exhibit 2, the valuation studies, the mileage covered by the valuation of the Boston & Maine, which also includes the Montpelier and Wells River should read 2,337 making the total mileage for the studies shown in this exhibit 7,344.

The witness intended to make it clear that Exhibit No. 2, referring to valuation, did not attempt to aggregate the entire present property investment of the systems which are included. In a number of cases the valuation studies do not cover all parts of the system, and this exhibit was based upon data furnished by the valuation department of each road, based on, as far as possible, the reports received from the Bureau of Valuation, and it covers only those parts of the systems which are covered by the valuations, and is also

for the dates of valuations. The purpose of this statement was for comparative purposes only, and the property investment figures which are shown in the fourth column are for the same properties which were covered by the valuations, and for the same dates. For that reason there can be no connection between those property investment figures and those which were submitted in Ex parte
369 74, and the mileages will not correspond exactly with the total mileages for these systems.

Illustrating that by the Boston & Maine, Prof. Cunningham's statement shows 2,258 miles. The valuation exhibit, with the correction which witness has just indicated, shows 2,337 miles. Without going into detail, witness would say that Prof. Cunningham's figure covers the Boston & Maine Railroad and leased lines. There are several affiliated properties which are included as the Boston & Maine system in the total property investment as shown on Exhibit 1, and included in Ex Parte 74. So far as the valuation is concerned, a part of these affiliated properties is included in the valuation; a part of them is not; and, furthermore, one of the leased lines, the Massawippi Valley road, which is located principally in Canada, is included in the statement of Prof. Cunningham, as that is a part of the Boston & Maine Railroad reporting in the Railroad Administration reports which he used, and that particular leased line is not included in the valuation. The property investment figures shown in Exhibit 1 are identical with those submitted in Ex parte 74, and include only the properties of these systems which are used in railway transportation service. The item covering materials and supplies is the amount actually on hand on October 31, 1919.

Witness has a brief statement which was prepared at his request by the Traffic Department of the Boston & Maine Railroad, which is based partly on reports of the United States Department of Commerce, partly on statistics published by the Commonwealth
370 of Massachusetts, and partly from reports of organizations of the industries in question.

In the wool industry, New England consumes approximately 60 per cent. of the entire consumption of the United States. In 1918 it is estimated by the Boston wool trade that the consumption in all states was approximately 605,000,000 pounds, and the consumption in New England 364,000,000 pounds.

In the cotton manufacturing industry, figures furnished by the Arkwright Club indicate that there are in the New England states 28.6 per cent. of the cotton manufacturing establishments of the United States, which have 39½ per cent. of the capitalization of all such industries in the United States, and 53.4 per cent. of the cotton spindles of the United States. The New England states consume approximately 36 per cent. of the total cotton consumed in the United States.

In the paper and board mill industry, figures prepared by the New England Paper & Pulp Traffic Association indicate that the daily production in New England is 6,271 tons, or approximately 27 per cent. of the total daily production of the United States.

In the boot and shoe industry, the three New England states, of Maine, New Hampshire and Massachusetts, produced, according to the 1914 report of the United States Department of Commerce, 52.1 per cent. of the total output of the entire United States for that period.

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In specific industries the same report of the Department of Commerce indicates that Massachusetts, of all the states in the Union, ranked first in the production of leather belting; second in the production of book binding and blank book making; first in the production of boot and shoe cut stock; first in the production of rubber boots and shoes, having produced 44 per cent. of the total output; first in the production of envelopes; first in the production of motorcycles, bicycles and parts; second in the production of emery and other abrasive wheels; and second in the production of optical goods.

The state of Connecticut ranked first in the production of clocks, of cutlery and edged tools, and of hardware.

Cross-examination:

Witness is informed that there is absolutely nothing in the figures introduced in his statement as property investment figures for the New Haven on account of the investment in the electric lines. That figure of $40,000,000 on account of an interest of the New Haven in the Grand Central Terminal was submitted by the New Haven in Ex Parte 74, but witness believes it was eliminated by the committee in presenting the case, to avoid duplication, as the New York Central also included the same figure, and for the purposes of the case it was immaterial as to which road it was included with, as long as it was in the group.

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Witness' Exhibit No. 10, showing an item designated "Trunk Line Connection, New York Central, including Boston & Albany," includes, so far as the Boston & Albany is concerned, traffic that originated or terminated on that line in New England, but was interchanged by the other New England lines with it.

Adjourned until Tuesday, December 28, 1920, at 10 o'clock a. m.

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Washington, D. C.,
December 28, 1920—10 a. m.

GEORGE M. WOOD, called as a witness by the complainants, testified:

That he is general freight agent with the New Haven Railroad, and has been with that railroad and the constituent parts of it for 32 years, always in the traffic department.

He is familiar with the history of the divisions which the New Haven enjoys only by what he has been able to glean from the records on account of their antiquity.

Asked to state how the rates are made up, on which the New Haven divides, the witness said:

"The general adjustment of rates to and from points on the New York, New Haven & Hartford Railroad in connection with the carriers west of the Hudson River is on the following basis to and from C. F. A. territory:

"Eastbound.—With the exception of stations Harlem River to New Rochelle, N. Y., which are on the New York rate basis, the rates to the balance of the territory are on the so-called Boston rate basis, which is the following arbitraries over the New York rate basis:

7, 6, 5, 4, 3, 2 cents per 100 pounds.

374 "Westbound.—The rates from points on the New York, New Haven & Hartford Railroad to points in C. F. A. territory are on the New York rate basis via the routes through Harlem River, Maybrook or the Albany gateways.

"In connection with the Canadian Pacific Despatch and the National Despatch, working through the various junctions with the B. & M. Railroad, the Canadian Pacific Railroad and the Central Vermont Railway, the rates are on a differential basis which, on Chicago, are the following differentials under the rates applying via the Hudson River gateways:

"5, 4, 3, 3, 2, 1 cents per 100 pounds, except that from New York City in connection with the New England Steamship Company the rates westbound via the differential routes are on basis of the following differentials under the standard routes:

10, 8, 6, 4, 4, 3 cents per 100 pounds."

The great volume of the New Haven's traffic passes through the Harlem River, Maybrook and Albany gateways. The volume passing via the differential route through the Canadian gateway is quite small. Witness has not the figures. He would say it would be four or five hundred thousand tons. That moves out of New Haven territory north, via either the Boston & Maine or the

375 Central Vermont, via Newport or Central Vermont Junction. Witness has not tested the time via that route. The haul is longer via his route than via the Hudson River gateways. That moves via the boats of the New England Steamship Company to the eastern ports; for example, Bridgeport, New Haven, New London, Providence, Fall River and New Bedford; thence via New York, New Haven & Hartford Railroad to point of connection on the New Haven Railroad. Witness has not the tonnage, but it is not considerable.

Asked to complete his statement as to how the rates were made up, the witness said:

"Rail, ocean and rail rates, westbound:

"In connection with the Merchants' & Miners' Transportation Company, rates are published to C. F. A. territory, which to 77 per cent. points and east are on the standard basis. To territory taking 78 per cent. to 85 per cent. the rates are on varying differentials under the standard rates. To territory taking 86 per cent. and over the differentials are under the standard all-rail rates by 8, 6, 5, 4, 4, and 3 cents per 100 pounds.

"Prior to Federal control, differentials were maintained eastbound from C. F. A. territory via the rail, ocean and rail route. The eastbound differentials were abolished during the period of Federal control, and have not been re-established."

376 Their traffic takes the route via their boats to Norfolk, Virginia; then west. The New Haven connects with the boats at Providence. The differential is in effect westbound only.

Asked to go ahead, the witness said:

"To and from south of the Virginia Gateways and south of the Ohio River, commonly known as Southeastern territory and Southeastern Mississippi Valley territory, the adjustment to and from points on the New York, New Haven & Hartford Railroad is on the basis of rates to and from New York, plus the following arbitraries:

"5, 4, 4, 3, 3, 2 cents per 100 pounds.

"Prior to January 1, 1916, the rates to and from Southern territory, to and from points on the New York, New Haven & Hartford Railroad, were on basis of the New York rates. The increase to the basis of the above-mentioned arbitraries over the New York rates is now subject of attack before the Interstate Commerce Commission in I. C. C. Docket 9148." That is being attacked by the commercial interests.

"Trunk Line Territory.—The general adjustment of rates between points on the New York, New Haven & Hartford Railroad and carriers west of the Hudson River in Trunk Line territory is as follows:

377 "Pelham rates, so-called, which very nearly approximate the New York City rates, apply to and from New Haven stations, New Rochelle, New York, and west thereof, including the Woodlawn Branch.

"Hartford rates apply to and from New Haven stations east of New Rochelle, N. Y., to but excluding New London and Williamantic, Conn.; also points on and south of the line of the Boston & Albany Railroad."

The Pelham rates witness has spoken of apply only on the Harlem River Branch, and then the branch from New Rochelle down to Woodlawn, which only embraces one or two stations. The amount is very small.

Boston rates, so-called, apply to and from the remainder of the territory, excepting Lowell, Chelmsford, South Chelmsford, and Carlisle, Mass., to and from which stations Lowell rates apply. Witness cannot, offhand, give the difference between the Lowell rates and the Boston rates. The Lowell rates are slightly in excess of the Boston rates in some cases,—not materially so.

The rates in either direction between Hartford and Boston rate points and the various rate groups in Trunk Line territory, Scranton, Harrisburg, Pa., and west thereof, are on the same level, but from the territory, Jersey City, N. J., and south to Norfolk and
378 Richmond, Va., the Hartford rates are slightly lower than the Boston rates.

In all cases the Pelham rates are lower than the Hartford rates by differentials of 5, 4, 3, 3, 2½ and 2 cents per 100 pounds on the six classes, excepting to and from Buffalo, N. Y., where the differentials are 5, 5, 2½, 2½, 2½ and 2 cents per 100 pounds, and to and from the points in Trunk Line territory east of Harrisburg and Scranton, Pa., where the differential to and from the Pelham rate points is slightly in excess of the arbitraries named above.

Witness is not able to state why the differentials vary as they do. The adjustment is very old. It has been continued, as a great many other things have, just because it was there. There are a great many things in the rate adjustment between New England and Trunk Line territory that are difficult to explain or difficult to justify, witness thinks—relationships that have been maintained, which he cannot see mean a great deal. There has been effort to change them, but it has never been productive of any good results.

Witness does not know how much of an effort and why it was not conducted with good results, for the reason that he has not participated personally. It is only, as he has been told by those
379 that have participated, that the old arrangements have been continued because some one was disinclined to change them.

Asked to indicate which of these differentials are of real significance, as applying to any considerable volume of business, the witness said:

"The adjustment from trunk line territory is where they creep in more. The Pelham rates are on the New York basis, or practically so. The deliveries in the Pelham group are practically within the corporate limits of Greater New York. As stated in here, the difference between the Hartford and the Boston rates in a great many instances is slight, if anything at all."

Asked to go ahead with his statement of the history of the divisions, the witness said:

"Pennsylvania Railroad.—Arrangements were concluded for publication of joint rates and divisions in March, 1880, between stations on the New York, New Haven & Hartford Railroad, and the New York & New England Railroad, on the one hand, and New Jersey Divisions stations of the Pennsylvania Railroad, stations on the Philadelphia, Wilmington & Baltimore and Baltimore & Potomac Railroads, on the other hand. The stations on the lines west of Jersey City included Jersey City, N. J., to Washington, D. C., via Philadelphia and Baltimore.

380 "Joint rates were published to take effect April 1, 1880, to and from stations Jersey City to Philadelphia, inclusive, and on May, 1, 1880, to and from points south of Philadelphia.

"In arranging divisions, the New Haven Railroad drew 100 miles and the New York & New England Railroad 200 miles east of Jersey City, including arbitraries of 4, 3, 3, 2 and 2 cents per 100 pounds on the five classes, respectively, for the floatage service between Jersey City and Harlem River, N. Y., which were deducted before prorating and added back to the east of Jersey City proportion."

At the time spoken of the New Haven and the New York & New England were separate railroads. The floating service is the steamer Maryland service, so-called. The actual distance is about 12 miles from Jersey City to Harlem River.

The Pennsylvania Railroad and connections drew 100 miles for the New Jersey Division, to and including Philadelphia, 200 miles for the Philadelphia, Wilmington & Baltimore to Baltimore, and 250 miles for points on the Delaware Division of the Philadelphia, Wilmington & Baltimore, and stations on the line south of Baltimore, to and including Washington.

Joint rates were published and additional percentage
381 arrangements were concluded from time to time covering additional territory, both east and west of Jersey City.

An arbitrary of 3 cents for the so-called Union Railroad is deducted by the Pennsylvania Railroad before prorating on all traffic to or from points in the Washington block. To the best of witness' knowledge, it goes back to the time of the first traffic arrangements, when the divisions were first made. That would place it back to about 1880.

Asked to proceed, the witness said:

"Baltimore & Ohio Railroad.—In July, 1881, joint rates were established and divisional arrangements were made covering the Baltimore & Ohio Railroad, in connection with the Pennsylvania Railroad. Divisions were predicated on basis of divisions in effect to and from contiguous stations on the Pennsylvania Railroad.

"Central Railroad of New Jersey, Philadelphia & Reading Railway, and Lehigh Valley Railroad.—In April, 1887, joint rates were established and divisional arrangements were entered into with the Central Railroad of New Jersey, Philadelphia & Reading Railway and Lehigh Valley Railroad. The grouping or blocking employed in making divisions was practically the same as with the Pennsylvania Railroad, excepting that in lieu of arbitraries for the
382 float service between Jersey City and Harlem River, 40 additional miles, in some cases, and 60 in others, were added to the mileage for the line east of Jersey City.

"Erie Railroad.—In February, 1896, divisional arrangements were consummated and joint rates published in connection with the Erie Railroad via the Harlem River-Weehawken route. The basis used in making the divisions is practically the same as with other lines operating via the Harlem River route.

"In September, 1901, the interchange with the Erie Railroad was shifted to the Newburgh-Fishkill Landing route across the Hudson River, where float service was employed and the same divisions continued as in effect via the Harlem River-Weehawken route."

The New Haven furnished the float service.

In April, 1904, a further change was made and the traffic turned to the Poughkeepsie Bridge route, at which time a change was made in the percentage divisions under which the Erie Railroad's mileage was reduced by 30 miles; the New Haven road reduced its prorating distance 20 miles, and 60 miles was allowed to the Central New England Railway as an intermediate carrier.

Witness said that at that time the Poughkeepsie Bridge had
383 become a part of the New Haven property, although it is operated separately as the Central New England Railroad.
The witness continued:

"West Shore Railroad.—The arrangement for interchanging traffic with the West Shore Railroad, via Weehawken, the original of which is not a matter of record, was cancelled about August, 1896, and new agreement made covering interchange via the Newburgh-Fishkill Landing route. The grouping of the territory for divisional purposes was practically the same as with the Erie Railroad.

"With the opening of the Poughkeepsie Bridge route, the West Shore point of interchange was moved to Maybrook, N. Y., and revised divisional arrangements were made.

"New York, Ontario & Western Railway.—Joint rates were established and divisional arrangements made with the New York, Ontario & Western Railway in September, 1901, for interchange of traffic via the Poughkeepsie Bridge route. The divisions were made on practically the same basis as with the other Trunk Line roads.

"Delaware, Lackawanna & Western Railroad.—In March, 1902, joint rates were established and divisionals made covering the interchange of traffic with the Delaware, Lackawanna & Western Railroad via the Harlem River-Hoboken route. The grouping of New Haven stations for divisional purposes was the same as employed in
384 making divisions with the Lehigh Valley Railroad, and also the blocking for the Delaware, Lackawanna & Western Railroad was arranged with relation to the method followed in making divisions with the Lehigh Valley Railroad, Central Railroad of New Jersey and Erie Railroad.

"In September, 1905, the interchange with the Delaware, Lackawanna & Western was shifted to the Poughkeepsie Bridge route, but with no change in percentage divisions, for the reason that the Delaware, Lackawanna & Western were obliged to use the Lehigh & Hudson River Railway as an intermediate carrier between Port Morris and Maybrook, taking care of the allowances for the Lehigh & Hudson River Railway out of its proportion, and the New Haven road were required to take care of the Central New England Railway proportion out of its earnings.

"Lehigh & Hudson River Railway.—In 1904 joint rates were established and divisions made with the Lehigh & Hudson River Railway for interchange of traffic via the Poughkeepsie Bridge route. The same basis for grouping of the stations in making percentage divisions was employed as with other trunk line roads.

"Delaware & Hudson Company.—In 1907, joint rates were established and divisions made with the Delaware & Hudson Company via the Poughkeepsie Bridge route, in connection with the
385 New York, Ontario & Western Railway. The divisions were made on practically the same basis as with the Delaware, Lackawanna & Western and Erie Railroads. For some years previous to 1907, joint rates and divisional arrangements were in effect between the Delaware & Hudson Company and New York, New

Haven & Hartford Railroad stations, in conjunction with the New York Central Railroad. These were cancelled in 1907, simultaneously with the establishment of the interchange at Maybrook in connection with the New York, Ontario & Western Railway.

"Lehigh & New England Railroad.—In July, 1908, joint rates were established and divisional arrangements consummated with the Lehigh & New England Railroad, the method employed in making divisions being the same as previously used in arranging divisions with the Lehigh & Hudson River Railway.

"Canadian Pacific Railway.—In June, 1908, joint rates were established and percentage divisions made with the Canadian Pacific Railway, through the medium of the Boston & Maine Railroad; the point of interchange between Boston & Maine Railroad and Canadian Pacific Railway being Newport, Vermont.

"Under the divisional arrangement, the New York, New Haven & Hartford Railroad receives 25 per cent of the Chicago dif-
386 ferential rates on westbound business to junctions with the Boston & Maine Railroad from all stations, and on eastbound traffic 25 per cent of the Chicago-Boston rates on traffic for points west of and including Williamantic and New London, Conn., and 20 per cent of the Chicago-Boston rates on traffic for points east of New London and Willimantic, Conn.

"National Despatch-Grand Trunk Line.—In January, 1920, joint rates were established and divisional arrangements made with the National Despatch-Grand Trunk Line to percentage points in Canada and Central Freight Association territory, on the same basis as in effect with the Canadian Pacific Railway.

"New York Central & Hudson River Railroad.—Joint rates and divisions have been in effect for years between New York, New Haven & Hartford Railroad stations and points on and reached via the New York Central Railroad, but records do not contain information covering the early years.

"In June, 1906, the point of interchange, which was at Fishkill Landing, New York, was discontinued, and new arrangements made for interchanging all of the traffic through the medium of the Boston & Albany Railroad. Divisions covering New York Central Lines, east, were revised on an arbitrary basis agreeable to all con-
387 cerned, at that time, and for the territory west of Buffalo on basis that allowed the New York, New Haven & Hartford Railroad practically 25 per cent of the Chicago rates, either east or westbound, to the stations New London, Willimantic and west thereof, and 20 per cent of the Chicago rates to and from stations east of New London and Willimantic, Conn."

Witness has prepared sheets showing the divisions from typical points in New Haven territory to points in trunk line and C. F. A. territory. He has used the same form in which Mr. Eaton prepared his.

Complainants' Exhibit No. 52, Witness Wood. Lines V & X were crossed out by mistake, but are to be considered as part of the testimony. Taking the first sheet, to the left hand side of the page, the bottom section, shows New Haven divisions on traffic between Allen-

town and Boston, Fall River, Hartford, Winsted and Poughkeepsie. It shows in each case the division of the first and sixth class rate from Boston to Allentown, both in connection with the Central Railroad of New Jersey and the Lehigh Valley Railroad; and that is repeated in the case of Fall River, Hartford, Winsted and Poughkeepsie.

Line H shows the through rate, first and sixth class, respectively; line I, the ton-mile earnings on the through rate in each case; line J, revenue to the New England carriers; line K, the Anderson scale for like distance.

The local rate from Boston to New York today on the first
388 class is 74 cents, just the same as the first-class rate is from Boston to Allentown, the reason being the hold-down.

The sixth class rate from Boston to New York is 24½ cents. There is no hold-down on the sixth class, because, generally speaking, the Anderson sixth class rates, witness thinks, are lower for comparable distances with the overhead scales.

Line L shows the per cent New England division to the Anderson scale; line M, the revenue west of junction. P shows the ton-mile earnings to New England carriers; Q the ton-mile earnings to carriers west of junction.

In all cases the division of rates that applies via Jersey City involves the water carriage from Harlem River to Jersey City that witness has described. The constructive mileage or arbitrary, which witness has spoken of, is included in these ton-mile figures. Everything that the New Haven gets is there.

V shows the amount in cents per 100 pounds accruing to New England carriers in excess of mileage prorate. If the witness had carried out X, it would have shown the same figures as V, only that they would be minus instead of plus. What the New England would gain on a mileage prorate over the present divisions, the
389 other side would lose the same amount; so that what is the gain on one side would be a loss on the other, in an equal amount.

In the upper right hand corner are shown some examples from the same points on the New Haven Railroad, to and from Newark, N. J.; the routes being via Campbell Hall and the Erie Railroad, via Jersey City and the Lehigh Valley Railroad.

In the case of Boston to Newark via Campbell Hall, the ton mile earning to New England carriers is 4.6 cents, and the ton mile earning to the carriers west of the junction is 5.2 cents on the first class traffic. On sixth class traffic the line east of Campbell Hall receives 2 cents per ton per mile; the lines west, 2.2 cents.

The haul of the Lehigh Valley is only 10 miles there. Where the mileage of either road is short, the ton mile earnings naturally are high, which will be noticed in the case of Hartford to Newark on first class, where the ton mile earnings of the Lehigh Valley are 53 cents.

In about half the instances, the New Haven gets something more than a mileage prorate, and in about half of them they get something less. Boston is the largest point and has the largest volume of movement. Fall River and Hartford are considerable points.

Winsted is a good sized station, but Poughkeepsie is not a heavy tonnage station.

Winsted and Poughkeepsie are representative points in
390 the various division groups. Poughkeepsie is the most representative of that division block it is in.

On the second sheet, Note 1, means that the steamer Maryland arbitraries of 8½ and 4 cents per 100 pounds, respectively, are deducted before prorating, and added to the east of Jersey City proportion. Note 2 means that the Union Railroad arbitrary of 3 cents per 100 pounds is deducted before prorating, and added to the west of Jersey City proportion. That is on the Washington Block. Both were taken into account in the figures the witness has produced.

Westerly, New Bedford and Stamford are important shipping points. Worcester is the junction with the Boston & Albany. There the New Haven have a haul of 88 miles, and rather short hauls itself. That is, they get a much shorter haul by taking it to Worcester than if they took it to Harlem River or Maybrook. Framingham is another junction with the Boston & Albany, where the New Haven gets only 52 miles, in the case of New Bedford to Framingham. It is a short haul in practically all cases to and from the B. & A. gateways, except when you get over on the extreme western end of the road. Witness is not able to say whether there is much of any business moving from Westerly by way of Worcester to Rochester; but thinks there is more or less business going to Rochester from Westerly. As to the amount of the tonnage
391 he does not know.

Westerly is a center for monumental granite. Framingham would be the natural junction point for traffic from Fall River or New Bedford that was going out over the Boston & Albany Railroad.

Sheet 4 shows divisions to Altoona, Harrisburg, Pittsburgh and Sayre. Sheet 5 shows divisions with points in the C. F. A. territory. In the large proportion of those cases both the New Haven and the Central New England participate in the movement in New England.

The sixth sheet shows divisions to other points in C. F. A. territory, Indianapolis, Chicago and Grand Rapids. One column shows business moving from New Bedford via Framingham, the latter being a junction with the Boston & Albany. The New Haven gets only 52 miles out of 948, whereas, if they moved by way of Harlem River or Maybrook, they would get a very much longer haul. The New Haven revenue on traffic in connection with the New York Central Lines is predicated on Chicago earnings.

Sheet 11 shows eastbound traffic from Louisville, St. Louis, and Cairo, to points on the New Haven line.

Sheet 12 deals with points in southern territory, Atlanta, Savannah, Jacksonville and Birmingham.

The New England roads have had no voice in the making
392 of those rates from south of the Virginia gateways. They are made on arbitraries over the New York rates. How they are constructed, the witness does not know. They were published as joint through rates, and witness believes they were concurred in by the New England railroads.

In saying that the New England roads have had no voice in the making of those rates, the witness means that they have been made by the southern roads, allowing the northern roads fixed specifics north of the Virginia gateways and the Ohio River crossings. The southern roads make such through rates into New England as they deem proper—on what basis witness does not know—keeping in mind that they allow the lines north of the Virginia gateways these stated arbitraries. In other words, they know the measure of the compensation coming to the lines north of the Virginia gateways. How they make the rates witness does not know, except that they figure fixed arbitraries over the New York rates. The southern roads have no authority to deviate from the specifics or arbitraries that are to accrue to the lines north of the gateway. Whatever rate the southern roads make, they must pay that much to the lines north of the gateway. The southern roads have nothing to do whatever with the amount of revenue that accrues to the lines north of their gateways; they build the rates on those specifics north
393 of the gateways, and have no authority to deviate from those specifics as measuring the earnings of the lines north. There are instances in the Atlanta and Birmingham divisions where the New England roads receive less than a mileage prorate. From Boston and Fall River to Atlanta the New England lines receive less. From Birmingham they get less to Boston, sixth class, via Maybrook, than Fall River, and both classes to Poughkeepsie.

Sheet 14 shows divisions to points in western territory. It shows divisions to Vancouver, Spokane, Seattle, and Portland. That is Vancouver, Washington.

Sheet 16 shows divisions with San Francisco and Los Angeles.

Complainants' Exhibit No. 53, Witness Wood, is a map showing the percentage blocking between points on the New York, New Haven & Hartford and Central New England Railway, and the Pennsylvania Railroad, Lehigh Valley Railroad, Central Railroad of New Jersey, Philadelphia & Reading, Baltimore & Ohio, and Delaware, Lackawanna & Western Railroad. Each column represents a different block. The blue represents the Boston division block, including the block at the left hand side of the map that runs from South Norwalk to Pittsfield. It also includes the blue lines on the easterly end, commencing east of New London and Willimantic. The red is the Hartford division block. This
394 little piece way out at the left hand end, Poughkeepsie, is a part of the Hartford division group. The yellow represents the Provincetown block, the green is the Pascoag block, which takes Boston per cents plus arbitraries. It does not go up as far as Woonsocket. It starts just outside of Providence and runs to Pascoag, through Harrisville, and then across to, but not including, Woonsocket. The maroon is the Wood River Branch Railroad, or the Hope Valley block. The brown is another short lateral road, the Newport to Wickford road, called the Wickford block, running from Wickford Junction to Wickford Landing.

The next is another short line that runs from Kingston, R. I., to Narragansett Pier. Then comes the so-called Westfield block, which

starts just outside of New Haven and runs up through Plainville, through to Turners Falls. The last is the Highland block, which is a short block from Campbell Hall to Poughkeepsie. That is in lighter red. The yellow block, called the Provincetown block, is practically the Old Colony Railroad, except that at points like Mansfield and Attleboro, where they touch the main line from Boston to Providence of the Old Boston & Providence Road, those points are included in the Boston division block. The Old Colony ran clear up to Fitchburg and Lowell, and that accounts for its going right across. The dark brown, in the center, that runs
395 north and south, is the old New Haven & North Hampton Railroad. The red, which is called the Hartford block, is substantially a portion of the old New England Railroad. The New England road ran through Willimantic to Hartford, Plainville and Waterbury. The red line is the old New York & New Haven. The only explanation witness can give of that is what he has been able to cull from the records, and that is that it has grown as different component parts of the New Haven railroad have come into the system and have been added to one block or another.

The sheet attached to the map, and called "Statement for Map No. 1 Showing Prorating Percents and Comparison between Prorating and Actual Miles," explains that feature of it. The sheet accompanying the map shows the prorating miles east and west from typical points for the various division groups, and also the actual miles, minimum and maximum, in each block, both east and west of the Hudson River. It also shows the excess mileage east and west, maximum and minimum, in each block. It also shows the prorating per cents on which the rates divided.

Taking the first line, showing the divisions on which the rates divide, the New Haven gets 66.67 per cent of the through rate, and the others 33⅓ per cent. On the next block, Hartford, the divisions
396 are 50-50, keeping in mind, however, that on both blocks the steamer Maryland arbitraries are deducted before the divisions are applied. So that in the witness' percentage the steamer Maryland arbitrary is not included. That sheet deals wholly with division on through rates with the Pennsylvania, Lehigh Valley, Central of New Jersey, Reading, Baltimore and Ohio, and Lackawanna.

Complainants' Exhibit No. 54, Witness Wood, shows the blocking in connection with the Erie Railroad. The blue shows the Boston Division block. The darker shade is the Berkshire block. The red is the Pascoag Block; the yellow, the Provincetown block. The green is the Wood River Branch Railroad. The purple is the Narragansett Pier Railroad. The light brown is the Newport & Wickford Railroad, and the pink is the block from Campbell Hall to Poughkeepsie, known as the Highland block. This is an entirely different system of blocking from that used for the Pennsylvania and the B. & O. The witness' only explanation is that this is due to the fact that the divisions were adopted at a different time in the history of the New Haven System. The part of the road which came from the Old Colony Railroad still seems to be a separate block by itself.

That is the only block which might be said to be distinct, that and the Pascoag block, and these short lateral roads have not changed. But outside of that, the blocking is entirely different from that in connection with the Pennsylvania and the Jersey City connections.

The sheet attached to the map, entitled "Statement for
397 Map No. 2," purports to show,—it shows the prorating miles, actual miles, excess mileage, and prorating per cents, between the various percentage blocks and Wellsburg, N. Y. group, on the Erie Railroad. All of these blocks were established at the time the divisions were agreed upon, except in the case of some of the lateral roads that through rates were made to at a later date.

Complainants' Exhibit No. 55, Witness Wood, is on traffic to and from the Central Freight Association territory, via the fast freight lines working over the Erie Railroad, Lackawanna Railroad and Ontario Central Despatch. The Hartford block is shown in blue. The Boston block is shown in yellow. The Newport & Wickford Railroad is shown in purple, the Pascoag block is shown in red. The Provincetown block is shown in green, and the Poughkeepsie block, from Campbell Hall to Poughkeepsie, in black. That is practically the Poughkeepsie Bridge, and the points west of the bridge up to Campbell Hall. Witness cannot state why that arrangement of blocking differs so much from the two preceding ones. It is just historical, and has grown in the shape that it is illustrated on this map. The dotted line between Worcester and Sterling Junction, about the middle of the upper part of the map, is the Boston & Maine Railroad, and the New Haven operates over it under a track-
398 age arrangement, freight and passenger service.

The statement attached to map No. 3 shows the prorating mileage, actual miles, excess mileage and prorating percents in connection with the Ontario Central Dispatch fast freight lines via the Lackawanna, and the fast freight lines via the Erie, to and from the various groups.

The letters in the first group, "O. C. D." mean Ontario Central Dispatch. That is the fast freight line working over the New York, Ontario & Western Railroad. The prorating per cents are predicated on the prorating miles. In other words, the prorating miles make the prorating per cents, and by adding the prorating miles together, they will arrive at the prorating per cents.

To the best of witness' knowledge this is absolutely true in all instances.

Complainant's Exhibit No. 56, Witness Wood, shows the division blocks on traffic to and from Central Freight Association territory via the New York Central lines. The blue is the Providence block, and includes all the lines east of Willimantic and New London, with the exception of the lateral roads, the Newport & Wickford road, and the Narragansett Pier Railroad. The red shows the New Haven block. The green shows the Hartford percentage blocks—that is, the Central New England Railway.

399 Complainants' Exhibit No. 57, Witness Wood, is in connection with the Canadian Pacific Dispatch and the National

Dispatch, Great Eastern lines. On this sheet the per cents are not made on a mileage basis.

Complainants' Exhibit No. 58, Witness Wood, shows blockings in connection with the Star Union Line, working over the Pennsylvania Railroad, and the fast freight lines working over the Lehigh Valley; also the Central States Dispatch, and the Blue Ridge Dispatch. On this map the red lines indicate the Hartford percentage group. The yellow lines indicate the Boston percentage group. The green lines the Provincetown percentage group. The short black lines represent the Poughkeepsie group. The brown is the Pascoag group. The purple is the Wickford group, covering the Newport & Wickford Railroad. The blue is the Narragansett Pier Railroad. Accompanying the map is a statement which shows the prorating mileage, actual miles, excess mileage, and prorating per cents on Chicago group, to and from the various groups on the New Haven Railroad.

Complainants' Exhibit No. 59, Witness Wood, is in connection with traffic with the West Shore Railroad and the New York, Ontario & Western Railway. The blue shows the Boston block. The yellow shows the Provincetown block; the red, the Pascoag block;
the blue, the Wickford block, Newport & Wickford Rail-
400 road; the green, the Narragansett Pier Railroad; the purple, the short block known as the Highland block, from Campbell Hall to Poughkeepsie; and the brown, the Wood River Branch Railroad.

Accompanying the map is a statement showing the prorating miles, actual miles, excess mileage and prorating per cents, to one group on the West Shore and one group on the N. Y. O. & W., from Boston block and Provincetown block.

Complainants' Exhibit No. 60, Witness Wood, shows the blocking in connection with the Southern Despatch Lines: The blue represents the Hartford block, the red the Boston block, the yellow the Provincetown block, the purple the Newport & Wickford Railroad, the pink the Narragansett Pier Railroad, the green the Pascoag block. Accompanying the map is a statement which shows the prorating mileage, actual miles, excess mileage and prorating per cents.

Witness has no explanation for this rather extraordinary confusion of blocking arrangements than that it has simply grown up in the different stages of growth of the New Haven Railroad. It has simply grown up over a period of years.

Asked to state if these blockings were made today, what changes would be made in these blockings, in his view, the witness said:

"Mr. Examiner, it would depend wholly on what angle you
approached the subject, as to what would be done in that
401 respect."

Here and there witness has pointed out that in making up the rates or in connection with the divisions arbitraries have been used at different points on both sides of the junction line. The imposition of such sums, called arbitraries, has been in vogue for a

great many years on both sides of the junction line. These have arisen under varying conditions. The one on the Pennsylvania road, called the Union Railroad, had some connection with the tunnel at Baltimore. The only map witness ever saw of the Union Railroad, so-called, seems to include the tunnel. That applies only to the Washington block. The New Haven's steamer Maryland arbitraries arose wholly out of that water transportation.

Cross-examination:

Referred to Complainants' Exhibit No. 60, and asked to explain the meaning of the colors that appear there between the point marked Dublin Street and the point marked Westfield, the witness said:

"That is what was chartered and built as the old Meriden & Cromwell Railroad, and from where the white portion of the line commences at Dublin Street it is not operated at all. There is no through service over it. The tracks are there but it is not
402 operated. We operate out from the Waterbury end a little way beyond Dublin Street, serving industries, and then at Meriden we operate in a short distance on either side to serve one or two industries close to the main line running from New Haven to Hartford, and the same at the Westfield end, but there is no through service over that road. The Boston block in that Exhibit was extended in over the line of the old New England Railroad to and including what is known as Fairmont Station, which lies between Readville and Boston. Wherever the stations, however, were common, as between the New England road and the Old Colony, they were put into the Boston block. Readville being a common point, fell in the Boston block.

The New Haven gets the Boston divisions from, for instance, Danbury, Branchville and Ridgefield, whereas they get the Hartford divisions from Middletown, and so on. The only answer to that is that the blocking you see on this map is one that has grown up over a long period of years, and represents these different roads that are now a part of the New Haven road, being allocated to different division blocks as they came into the property.

Witness does not believe that anybody would claim that that is a consistent blocking. The part that is nearer to the Hudson River is a part that was later acquired by the New Haven, and witness presumes that at that time the New Haven insisted on the Boston basis from that territory, because they landed in the Boston block. Witness does not believe that there is anybody connected with the New Haven road that were parties to the negotiations.

Comparing Complainants' Exhibit 53 and Complainants'
403 Exhibit 54, the latter showing apparently a less breaking up into groups, the only explanation witness has to offer is that these groupings developed because of the different time at which the divisions were established, and as regards a consistent or sensible or logical basis, witness does not offer any reasons. Witness thinks, as Mr. Eaton does, that the present division blocking is not logical, and could be improved.

Asked whether, in a solution of this controversy, it should not be maintained by the Commission, the witness said:

"I cannot help but view it that eventually this method of blocking must go. It is not logical."

Referred to the steamer Maryland arbitraries, or rather, what the New Haven now receives for floatage, and asked whether the allowance for that floatage out of the joint rate from the Pennsylvania Railroad, is a liberal allowance, witness said:

"No; I do not think it is sufficient to cover the expense of that connection," and "Why, we are allowed at the present time—at least, I understand the accounts are being settled—by the steamer Maryland receiving the following arbitraries: 8.5, 6.3, 6.3, 4.2, 4.2, 4.2."

Witness does not think that they are sufficient, on the basis of cost of the service, and on the basis of what they are allowed
404 by the other roads.

Confining his answer to the question of the cost of the service, he thinks the expense of the service is such as would warrant higher arbitraries, higher allowances, more consideration for that expensive interchange.

Witness referred in his direct testimony to a change of the interchange with the West Shore, once at Weehawken, and later established at Newburgh. When the floatage was at Weehawken, it was the width of the Hudson River, which witness is not able to state at that point.

Witness has not recently computed the distance from Newburgh to Fishkill. He understands the actual distance, as well as it can be reckoned, from Harlem River to Jersey City, is 12 miles. Just how the distance to and from Weehawken would vary from that, he is not prepared to say. The change to Newburgh resulted in the diminution of the floatage distance to the width of the Hudson River at Newburgh. It is the same width that witness was speaking of when dealing with the interchange of the Erie Railroad at that point.

Witness thinks that the interchange between Newburgh and Fishkill was perhaps in the wintertime surrounded by greater difficulties than in New York Harbor, on account of the ice. Being up the river, the ice offered a very material obstacle during the
405 winter times for the steamer traffic.

Witness thinks, in their interchange with certain lines where there was no float service, they received 40 miles arbitrary in lieu of that float service from their connections. That was in connection with the Jersey Central, and was in addition to their division on the basis of an arbitrary mileage award.

Witness does not know how they got that extra mileage, or the basis for giving that. Those percents were made years before witness' time. There is no one connected with the New Haven Railroad that is with them today, that can state how that was computed.

Witness thinks it was 40 miles in some cases, and 60 in others.

In the allowance of that mileage to the New Haven, they performed the floatage service, but instead of being allowed arbitraries for the steamer Maryland service, additional miles were added to their prorating distances, in lieu of the arbitrary sums. Today it gives the New Haven more money. It gives more money today than they get with the Pennsylvania Railroad.

The traffic witness referred to with the Merchants & Miners Transportation Company moves in New England from points east of Willimantic and New London down to East Providence, R. I.

406 Witness could not give the average length of haul. It is of necessity a relatively short haul. Witness has not the figures of the earnings out of that traffic, and cannot bring them into comparison with their divisions on other traffic. Recently the New Haven has not had any trouble in respect to the detention of cars at the port under those arrangements. The traffic is so light that there is no car detention that he knows of at the present time.

The experience of any rail line interchanging with a boat line, is that there always is, at times, detention. Via that route to certain points there are differential rates. Witness would say that the same arguments would be true as to the maintaining of these differential rates as those that were made in support of the diffierential rates via the Canadian lines. That is on account of the length of haul. Witness would not want to say it is unprofitable to the New England lines. The advantage to the New England lines in continuing to participate in these lower rates, via the differential routes, arises from the benefit that it is to the industries in their territory. It is a common saying that if the industries prosper in a certain territory, so does the road prosper. Witness does not see any other advantage to their roads than that advantage.

407 Speaking of the Canadian differential lines, the New England divisions give them adequate revenue. Comparatively speaking, the witness would say that the divisions with the differential line give the New Haven road practically the same revenue that they give them in connection with the New York Central. Witness is speaking in terms of per ton per mile. Their hauls are substantially the same. They differ a little bit because they have other points of interchange with the Boston & Maine, like Lowell and Fitchburg, on the differential line traffic.

It always follows when you compare a comparatively short haul with a long haul, that that works out that way, the ton mile earnings are greater on the short haul.

As a traffic man, witness would suspect that if a line having a short haul did not show better ton mile earnings there was something wrong with the basis of divisions. Witness does not see how a road could hope to get its local rates as divisions. It would get something less than the local rates, because on the local rate they would perform two terminals as compared with the division.

Westerly is principally a stone shipping point, although there are other industries there. The American Thread Company have a mill, and there is a small silk mill that has started in at Westerly.

408 To Central Freight Association territory witness believes stone moves on commodity rates. The Central New England Rail-

road, witness understands, is controlled by the New Haven. As a traffic man, witness would regard a haul that involved those two railroads as a two-line haul. Rates on perishables from the South are made on the basis of allowing the lines north of the Virginia gateways certain fixed arbitraries. They are published as through rates. They do not differ in that respect from these other rates which witness was describing. If there should be a revision of those rates, it should affect the lines south of the gateways. Witness has no thoughts as to how it should affect them, and no suggestions to offer as to that.

As to any traffic that goes west of Chicago, in the readjustment of divisions, witness thinks that should affect the lines west of Chicago. He thinks there should be a readjustment. He has no suggestions at this time to offer as to how that would be affected.

Referred to Map No. 56, witness testified that those bases of divisions apply also to traffic delivered by his line to the Boston & Albany. It represents the blocking in connection with the fast freight lines working over the New York Central via the B. & A. gateways. So that they would get a Boston block on traffic that might be delivered, for instance, from Bellingham Junction, if there were such traffic, to the Boston & Albany, a few miles above.

409 That Boston block applies from all points east of Willimantic and New London. It applies as well to traffic that is delivered to the Boston & Albany as to traffic that is delivered at those other gateways.

Witness has no definite suggestion to make as to the proper basis for revising these divisions. There might be a number of different plans adopted. He has no definite plan to recommend. There are a great many bases that might be considered, one of which has been mentioned here by Mr. Eaton, the road to-road percents. Witness' exhibits were offered to put before the Commission just as clearly as they could what the divisions are today, so that it might be a clear picture. Witness was not at all seeking to justify these conditions, as, for example, that the Provincetown block crosses the Boston block in some instances, or that there is an intermixture of the blocks and confusion. They felt that if a great deal of testimony was given about the Hartford block and the Boston block, and the Commission did not have before them a map which would graphically show what they were talking about, it would be confusing. That was the reason they have blocked it out as they have, to make it graphic, so that the Commission could see just exactly how the territory was blocked for division purposes.

410 Redirect examination:

Referring to the allowances for the steamer Maryland, and asked whether this allowance of constructivve mileage of 40 to 60 miles was of later date than the arbitraries, or earlier date, the witness said:

"It was a later date, for the reason that the divisions were first made with the Pennsylvania Railroad based on the allowance of the

steamer Maryland arbitraries. That was back, I understand from our records, about 1880. The divisions with the Central Railroad of New Jersey were not made until about 7 years later."

They are anywhere from 30 to 40 years old, and the costs of operating that water floatage were a very different thing from what they are now, but the divisions remain the same and the allowances remain the same.

Referred to those differentials either by the southern route or by the northern route, and asked whether it is not the fact that a good many New England industries have grown up with and lived by the use of those differentials, the witness said:

"Speaking of New England as a whole, I think that is true. The all-rail differential basis, however, is not an institution of
411 long standing in New Haven territory, as compared with—"

Outside of New Haven territory it is a very old arrangement. What the New Haven did was simply to extend a very ancient principle into its territory.

Referred to the southern differential by the Merchants & Miners, the witness said:

"There is quite a considerable tonnage that comes in that way, of cotton." It would make a disturbance in the New England industrial conditions if those differentials were done away with.

Referred to the last two sheets of Complainants' Exhibit 52, the witness said that those divisions show very long hauls for roads west of Chicago running up to 3,468 miles, in the case of Vancouver, 2,826 miles in the case of Spokane, and 3,135 miles in the case of Seattle. Witness understands that that business between Chicago and those western points moves very largely in train loads. It aggregates at the Chicago gateway, in quantities sufficient to run it solid.

Witness believes that on any fair basis the ton mile earnings of the New England roads for their short hauls on that business should be very much greater than the ton mile earnings of the western roads. In some cases, in that business, the New Haven does not get even a mileage prorate.

412 Referred to his statement that he had no suggestion as to how these divisions should be revised to work equality and justice in this case, and asked whether he had felt that the part he was asked to perform was the preparation of these exhibits and the explanation of the rates, and that suggestions as to the remedy should be left to others, the witness answer in the affirmative and said that therefore he had not prepared himself by working out any plan by which relief could be afforded.

Recross-examination:

Asked how the rates via the standard routes from New England to Central Freight Association territory generally, are related to the rates from New York City, witness said that the westbound rates are the same. Asked why New England industries should have a better

rate to Central Freight Association territory than a trunk line point itself nearer those destinations, like New York City, and as to what is the reason that justifies his statement that the industries would make a disturbance if they were deprived of that preference, the witness said:

413 "Because in the northern part of New England I believe it is true—although that might bet better testified to by a Boston & Maine witness—but I believe it is true nevertheless that industries have grown up under that adjustment of rates."

The justification lies in the fact that it is a longer mileage route. In this case it has justified a differential under the standard rate. Ordinarily, eliminating competition, longer mileage would justify higher rates, as compared with short mileage. The differential rates in New Haven territory are of comparatively recent origin, and witness thinks that the naming of any industries in New England that have grown up and are dependent on these differential rates would better be answered by Mr. Eaton, as long as he is to resume the stand.

Asked if they are of recent origin how he undertakes to say that the industries have grown up on them, the witness said:

"Why, I say I understand that to be the fact in northern New England, which our rails do not serve."

On the New Haven they have not been established sufficiently long to create the growing up of the industries.

Witness thinks the rates on cotton via the Merchants & Miners Transportation Company, are on differentials under the all-
414 rail rates.

Witness does not know the underlying reasons why these various component parts of the New Haven System came into the system. To some extent, in the case of the Central New England, this results in traffic which previously had moved over the two sides of the triangle, now moves over one, with economy of distance.

Witness does not know that this has ever been used as a reason for reducing the division of the New England roads, because of the less service required from them.

While perhaps the mileage may have been decreased, witness does not think the value of the service or the cost of maintenance of the line has decreased. One must keep in mind, when considering the Maybrook route, that in the Poughkeepsie route is a tremendous investment of money. It is not like an equal distance on a roadbed, by any means.

With respect to this Canadian group differential, the thing is to be considered more with respect to the service that the route renders than the distance. The basis of the differential idea is that it does not give as good a service to the shipper, and while it is a longer distance, because of the less satisfactory service in point of time, you cannot charge as much. That is the idea under those differ-
415 ential routes. They are very old for northern New England. Witness can safely say they date back over 25 years. These

differentials, in some instances, apply through Canada by the Canadian Pacific and the Grand Trunk.

Recess.

WILLIAM J. CUNNINGHAM resumed.

Further cross-examination:

The application of witness' Exhibit No. 16 to the question of divisions as between the New England roads and the defendant carriers, shown in the exhibit, is that in very recent years, namely, in the Federal control period, the New England roads, due to an accentuation of the operating handicaps which witness mentioned, have been unable to do as well in net operating income as the trunk lines were able to do under the same operating managements under unified control.

Witness thinks that it is significant, in connection with this case, that the New England roads, as a whole, according to his exhibit, earned only about 13 per cent; as compared with the standard return, while the trunk lines as a whole earned about 49 per cent.

Witness does not think it would be more significant, as-
416 suming that comparison as between the groups covered by the exhibit has some significance, as related to this case, if he compared the extent to which the New Haven earned the standard return with the extent to which the Pennsylvania Railroad, for illustration, earned the standard return.

Asked why it is that the general principle that he had been discussing has less significance when given a concrete application, the witness said:

"Because during Federal control there was very great diversion of traffic. The Pennsylvania Railroad and the Baltimore & Ohio had diverted from them traffic which was routed over the New York Central. That principle of diversion would not affect the region as a whole, but would affect individual lines. The principle of diversion of traffic was not applied to any material extent in New England, but was applied to a material extent in trunk line territory."

Witness's study was based upon the New England roads as a whole and the rest of the Eastern district—the roads in the Eastern district—as a whole; and the conclusions which he came to were based on the study as a whole. If witness were to express an opinion on the premises which were suggested, he would have to make a similar study of the New Haven as an individual road and the Pennsylvania Railroad as an individual road. He has not made that study;
417 but knows enough about the situation to say that the conditions were not stable in the two periods, so that, while it would be fair to compare New England as a whole with the rest of the Eastern district as a whole, during that period, it might not be fair, and probably would not be fair, to compare the Pennsylvania Railroad and the New Haven, or the Baltimore & Ohio and the New Haven, because of that very important factor of the diversion of a

large amount of tonnage. The Director General made public announcement of the fact that the northern trunk lines were to be used during Federal control for the movement of through freight for expedited movement, while the Baltimore & Ohio and the Pennsylvania in the Allegheny region were to be relieved of that traffic so that they might handle the immense volume of traffic originating in northern district, and thereby could handle the other traffic to better advantage if relieved of this vast freight traffic which was assigned to the New York Central lines. Therefore they would throw out any comparison of the Pennsylvania Railroad with the New Haven road.

It is putting it much more strongly than the witness would do in his own language, to say that he suggests that the statistics for
418 Federal control period, in his judgment, are wholly unreliable as indicating the relative necessities or the relative earnings of one New England road compared with a particular road west of the river. The statistics of the United States Railroad Administration were not unreliable. Witness believes they were accurate. But they would have to be interpreted in the light of qualifying conditions, and before you could make any deductions from the figures as reported by individual roads, you would have to have an evaluation of those qualifications, and each case would require separate treatment.

A comparison of any one road in New England with any one road in the trunk line district would have to be surrounded by the qualifications which witness has alluded to in previous statements.

Witness can subscribe to the suggestion that in order to get at the facts regarding the divisions of the New Haven Railroad with, for example, the Jersey Central Railroad, it would be necessary for the Commission to take up that case, as a case, and supplement all the testimony that witness has given on the particular branch of the case that he has covered by a great deal of separate information dealing with the peculiar circumstances that affected both the roads compared during the past 3 years.

419 Referring to the fact that according to witness' Exhibit 16, the New Haven net Federal income during Federal control was 35 per cent. of its standard return, whereas in the case of the Pennsylvania the net Federal income during the Federal control period was only 14½ per cent. of its standard return, this shows, if anything, that the Pennsylvania Railroad's net operating income was understated during the test period, and that the New Haven's net operating income was overstated during the test period.

Witness has already mentioned a very important factor with reference to the Pennsylvania Railroad, namely, the diversion of traffic. During Federal control—witness thinks from April 1, 1918; it may be May 1st—per diem as between roads was suspended. That relieved the New Haven of its debit balance of per diem. To that extent the New Haven's income account for 1918 does not carry the full load that it would have carried under private control. So that the New Haven's figures are subject to that qualification as being over-stated, and the Pennsylvania's figures are under-stated.

Asked what significance he attaches to a comparison of those facts shown in his last column on Exhibit 16, showing that the percentage

of net Federal income to standard return in the case of the New Haven and the Erie, which is stated, in the case of the New
420 Haven, at 35 per cent., and in the case of the Erie at less than zero, the Erie having had a deficit for the Federal control period of $3,000,000, the witness said:

"I would state, in connection with that, that the conditions on the Erie were just as subnormal as they were on the Pennsylvania Railroad. The diversion of traffic from the Erie, as I remember the explanations which were made at that time to the Division of Operation of the United States Railroad Administration, put a terrible crimp in their net earnings at that time; and there were other things which affected expenses, so that all the way through you would have to qualify the Erie's showing.

"I wish to revert to my statement that these things would be ironed out if you took the region as a whole. What the Pennsylvania lost, another trunk line gained. So that the comparison would be fair by regions."

Asked whether he had taken into account that during Federal control there was a substantial diversion of traffic that had moved through eastern territory, through the New Orleans gateway, the witness said:

"That movement, as I recall it, did not have very much effect on the figures of 1918, and I should not regard it as substantial in any event."

421 Asked if the operating ratio shown in Exhibit 16 had any significance if viewed in detail as to particular roads, comparing the operating ratio of the New Haven with the operating ratio of some other roads individually, the witness said:

"The operating ratio, in itself, is a factor that, even under normal conditions, has to be surrounded by many qualifications. Under Federal control those qualifications were very much intensified; and by individual roads the operating ratio during that period does not have a great deal of significance. But again I say that the operating ratio for the region as a whole would have some significance, because I assume that the inequalities as between roads—that is, by reason of diversion and the like—would be flattened out through the territory as a whole."

Asked whether, if he were comparing relative operating costs in southern New England with those in the eastern region outside of New England, he would say that the operating ratio of the New Haven, considered by itself, was significant as compared with the operating ratio of the eastern territory, there being two separate territories—southern New England and trunk line and C. F. A. territory—the witness said:

"Yes; if there are no substantial qualifications to the New
422 Haven individual operating ratios, your statement would be true."

Referring to the exhibit as a whole, the witness said:

"Well, I think it is unsafe, with the policy of the United States Railroad Administration as to unification carried to such an extreme, to make any deductions by comparing a single unit in any region with a single unit in another region, or a single unit in any region with the rest of the region as a whole. I should not want to commit myself on an interpretation of the operating ratio on a single road with the total of another region without giving some thought to what the qualifications might be."

Southern New England is not shown on the exhibit as a region.

The answer witness has made for the New Haven as a separate road and for southern New England would be the same.

According to Exhibit 16 the operating ratio during the period of Federal control of the New Haven was 87.6 and the operating ratio of all the trunk line and C. F. A. roads, considered as a group, was the same identical per cent, 87.6. This is the total operating ratio but not the elements of the operating ratio. If witness had been asked, "What significance has this: the transportation of the New Haven road was 48.2, and that of the rest of the Eastern rail-
423 roads was 44.6," he could have given a clear answer. The answer is that the difference comes in the transportation ratio being more and the maintenance ratio being less.

Witness has written 100 pages on the significance of the operating ratio. The significance of the operating ratio is that it costs very much more to do business in New England than it does in trunk line territory. It is not equally sound to conclude that it costs exactly the same for the New Haven Railroad to do business as it costs for the railroads in trunk line and C. F. A. territory, as a group, to do business, because the elements of the operating ratio are shown in the analysis. The maintenance expenses are less; the transportation expenses are more. The total is the sum of the elements.

Witness does not think it is fair to pick out one road and compare it with a group any more than picking a single road in one group and comparing it with a single road in another group is fair.

Asked concerning his reference to New England as one large terminal and its having been referred to as one yard, and to his Exhibit 16, and asked to state whether or not there is any reason for defining as part of one large terminal or as part of a yard, the Central New England Railroad, and whether it has any of those
424 characteristics, the witness said:

"Not in the same degree. I will answer the question frankly. That characterization applies to the New York, New Haven & Hartford and the Boston & Maine. Outside of those two, perhaps, it does not apply in anywhere near the same degree as it does to those two roads; and I can anticipate further, and will admit, that there is nothing substantially different between the Bangor & Aroostook, the Maine Central, the Central of Vermont and the Rutland Railroads than a large number of roads in Trunk Line territory. But Boston & Maine and New Haven mileage makes up a great proportion of the

mileage in New England—a sufficiently large part to control the characteristics of New England as a territory."

Witness' testimony as to the excessive increase in costs because of the terminal character of the territory he was discussing, and because of the diffusion of traffic and the number of branch hauls and those other peculiarities which he said made the increasing costs in New England greater than west of the river applied primarily to the New Haven and the Boston & Maine.

The increasing burdens of terminal expenses have brought
425 about a large part of the financial difficulties now faced by the New England Roads.

The Central New England is essentially a part of the New York, New Haven & Hartford Railroad, and the apparent deficit on the Central New England is probably influenced by inter-corporate book-keeping. Those two really ought to be combined.

The Grand Trunk in New England similarly is influenced by its relation with the parent company, and the standard mileage has not very much significance. With those two qualifications witness subscribes to the statement that it is true that of the 8 New England roads covered by his exhibit, the only four that showed deficits were the Central New England, the Central Vermont, the Grand Trunk in New England, and the Maine Central, and that the roads which made the worst financial showing in New England, comparatively, were the roads that did not have those terminal characteristics at all. The Central New England, the Grand Trunk, and the Central Vermont are somewhat like the Boston & Albany in that they go direct from one point to another, without much branch mileage.

The Boston & Maine covers northern New England and runs through the same territory and in the same manner as the Central Vermont and the Rutland, and in parts of New Hampshire
426 —northeastern New Hampshire—runs through the same territory as the Maine Central. The Boston & Maine serves the same territory as is served by the Central Vermont, the Maine Central, and the Rutland.

Asked whether he knows of any transportation reason, leaving out the geography of the case, justifying the New England group that he has shown in his exhibits, the witness said:

"It is historical. New England is a separate section of the country. From the beginning of the Interstate Commerce Commission classification, Group 1 was New England. The east of the Hudson River has been regarded as an integral rate and railroad territory, as well as—well, in every respect, economic, social and transportation. New England has been considered as a sort of unit."

There is no financial link between the Boston & Aroostook, the Maine Central, the Grand Trunk, the Boston & Maine and the New Haven.

Asked whether there is any purely transportation reason that he knows of for grouping them in this division case, the witness said:

"Yes. I can give you one reason, which has been announced by the Commission in its decision in Ex Parte No. 74—that New England calls for special treatment. But you cannot get away
427 from historical associations. New England roads are a New England group, and they have to go together in this case. They have common characteristics in their dealings with the lines west of the Hudson River, and the Official Classification territory Classification Committee recognizes New England as a district. We cannot disassociate our minds from the historical and geographical association."

As far as operating characteristics are concerned, the New England roads that witness has grouped together are most diverse, contrasting the Bangor & Aroostook with the New Haven.

Witness has said that the Central New England should be treated statistically as a part of the New Haven, and that the Grand Trunk perhaps ought to be left out because of its affiliations. If the Grand Trunk was taken out, the result would be that the percentage of net income to standard return for the New England group as a whole would be increased to 15.5 per cent. By taking the Grand Trunk out, for the reasons indicated, the result would be a change in a way that would weaken witness' argument. Witness made that statement in his direct testimony.

Witness would not say to put the Boston & Albany in would still further tend to put the New England group, thus consti-
428 tuted, on a parity with the group west of the river. The inclusion of the Boston & Albany would make the return for New England more favorable. All the historical reasons for grouping the roads as witness has grouped them would argue for including the Boston & Albany in New England. The reason the Boston & Albany was left out was because it is a part of the New York Central, and is therefore a defendant in this case. That seems to witness to be a good and sufficient reason.

Witness does not think that as a matter of accurate statistics, since this exhibit purports to compare transportation costs in New England territory with transportation costs in trunk line and C. F. A. territory, that it is quite defective and unfair to the defendants in its final result in wholly omitting the statistics of the Boston & Albany, which would produce a showing more favorable to the defendants in this case. This historical issue has been injected into it by the cross-examiner. Witness is not responsible for defending this grouping of roads in historical reasons. That has come up on cross-examination.

Asked what possible reason witness could offer for the grouping, outside of the historical reasons, he said:

"Because the executives of these roads have grouped together in making this combination on account of the New England
429 roads having acted before in their efforts to get better divisions from the lines west of the Hudson River. The Boston & Albany was not included, because for operating purposes it be-

longed to a road west of the river. Therefore, it could not go with this group, although in the beginning the Boston & Albany was going along. It later withdrew."

The Commission has already recognized the New England group in its comments in the decision in Ex Parte 74.

In the New England rate case the Commission drew a clear line between southern New England and the rest of New England, and the Anderson scale makes a clear distinction between the two territories. Witness objects to separating the New Haven and the Boston & Maine and the rest of the New England roads. His objection to that is that the Boston & Maine serves northern New England and, therefore, could not be separated from the other lines in northern New England.

Asked why, if he was going to take the Commission's statement in Ex Parte 74 as a basis for grouping the New England lines, he did not include the Boston & Albany, the witness said:

"For the simple reason that they are a defendant."

The exhibit was originally prepared with the Boston & Albany in.

Referring to witness' Exhibit No. 17, and to his testimony on page 77, it has not come to his attention that for the calendar
430 year 1919 the average haul per ton of freight on the New England roads was substantially greater than in 1918. In his direct testimony he thinks he stated,—at least he had it in his memorandum—that the reason that 1918 was taken was because it was the last available report of the Interstate Commerce Commission at the time these statistics were prepared.

Witness' exhibit for the year 1918 shows the average length of haul of revenue freight on the New Haven as 91.94. It has not come to his attention that the New Haven annual report to stockholders for the year 1919 shows that the average distance hauled of one ton of revenue freight, by rail, was 111.44 miles, which amounts to 14.78 per cent increase. Witness recollects, now that his attention has been called to it, of hearing a discussion among railroad accounting officers, about some change that the New Haven had made in figuring its average haul, by which they included an arbitrary or an assumed distance for the water haul. As to that, he cannot testify, but he did not know until it was mentioned, that there was so much difference. He thinks the New Haven people could explain that. He could have had the 1919 figures for the New England roads, but they were not available for the rest of the Eastern District without making special request on those roads for the information.
431 Therefore he took the latest official figures that were available.

If the average length of haul per ton on the New Haven was increased from 92 miles to about 113 miles, without anything in the statistics to explain it, witness would say that that was an important thing which should be considered in making a comparison.

Witness has run across nothing in the statistics to explain this increase more than that which he mentioned, the conversation he had with an official of the New Haven road, in which the official told him casually, he thinks, that the water haul was being included in a recent period, whereas it had not been included in a previous period, and gave witness the impression that the statistics of the latter period showed an increase in the average haul, although the figures of a prior period did not reflect that change. In other words, if the figures of the prior period had been computed on the same basis, there would not have been anything like that degree of change.

It has not come to witness' attention, as a result of the increase in the average haul per ton from about 92 to about 113 miles, notwithstanding the rate increases enjoyed, the New Haven's average receipts per ton per mile were less in 1919 than 1918. He did not know that. He should explain that he did not make a study
432 of individual lines. This was a group study. He did not go into the details of every road, so that a condition of that kind might escape his attention unless it were drawn to his attention casually, or through some other channel. The witness does not know whether this rather striking circumstance as to the New Haven was the result of the cessation, to an extent, of the movement of boats to and from the ports, forcing all-rail movements, or whether it was due to embargoes, or what the cause was.

As to his testimony on page 77 of the record that "The railroads of New England did not suffer by a diversion of traffic or any other influences which would affect their revenue in a greater degree than the revenues of trunk lines and the lines in C. F. A. territory," witness did not, in arriving at that, consider the individual situation of the New Haven. His general knowledge of the situation was through his connection with the United States Railroad Administration, in making studies currently of operating results, and that confirms his impression that the diversion of traffic in large degree was confined to the Eastern and Allegheny regions, and did not apply to New England. Witness knows that in the case of coal there was a big diversion of traffic from coastwise and rail routes into New England, to the all-rail routes; but that is not a
433 diversion as between roads. That is what he referred to in his testimony. In the Eastern region, that is, the Ohio-Indiana region, the central regions of the Eastern district, and the Allegheny, the diversions that he referred to were as between railroads.

With respect to coal, it might be a factor where a lot of competitive territory is reached, for example, by the New Haven and the Boston & Maine, so that if the traffic moved by a coastwise vessel and rail, it would probably be routed New Haven, while if it moved all-rail it might go through the Albany gateways and hence Boston & Maine. As to other freight, witness does not think it would be appreciable. Coal is a substantial part of the tonnage, but witness does not remember just how much.

Witness has no figures separating the average haul on interchange traffic of the New England roads individually, as compared with

their average haul on purely local traffic. Witness does not know whether it would be possible to furnish that separation; if not for all the New England roads, for the New Haven and Boston & Maine; he thinks Mr. Brigham could answer because he had charge of the compilation of the statistics. His impression is that it is not practicable to furnish any separation of local from interline traffic for any extended period.

434 Witness' impression is that, from the information he has, the average haul of the New England roads on interchange traffic is greater than that shown on Exhibit 17.

Referred to his exhibit No. 19, dealing with freight train data as to the Boston & Maine, and which gives no comparison with any other road, witness has no information to test the significance of these figures, any comparative data. He intended, if he did not do so, to state in his direct examination that unfortunately there is nothing available to them that would give them a clear index of the significance of these figures which, in themselves, are rather startling.

Witness has no statistics showing what the comparative train speed is, taking the Boston & Maine or the New England roads, as a whole, and comparing them with the roads west of the river. One figure in the last column of witness' Exhibit No. 22 seems to show that the train speed in miles per hour of the New England lines, as a whole, is 10.4 miles, while that of the trunk lines and C. F. A. lines, as a whole, is only 9.9 miles.

In the case of local service, the speed was 7.8 miles per hour. The figure quoted from Exhibit 22 covers all freight trains.

435 Witness has no data as to the relative speed of local trains in the two territories, but the data that witness has covering the relative speed of all freight trains in the two territories, shows that the New England lines train speed, on the average, is greater than that of the lines west of the river. It was, in the calendar year 1919.

The difference in train speed as to trains as a whole would be a factor that would tend to make the wage cost of the trunk lines and C. F. A. lines somewhat greater than that of the New England lines. Wage figures are reported separately on another exhibit, which shows that the cost of wages, per train mile in New England was 59 cents, as compared with 56.8 cents in the rest of the Eastern territory. The total of wages and other direct costs was $1.815 in New England, as compared to $1.822 in the Trunk Line territory, a difference of 4/10 of 1 per cent in favor of New England. That, however, is on a train mile basis. The factor that witness emphasized was the cost per 1,000 net ton miles which, in New England, for wages alone, was $1.24, compared with 67 cents in C. F. A. territory. There was a total direct cost per 1,000 net ton miles of $3.82 in New England contracted with $2.16 in the remainder of the Eastern territory.

Witness made inquiry on his return to Boston to find the number of train crews that were represented by those train runs, and
436 he was told by the transportation man who worked up the figures that for those 244 local and mixed trains, they required 140 crews. That was the information he did not have when asked the question on his direct examination. The local trains have one extra man on a crew.

Witness made no inquiry as to the relative number of crews on these local trains, or number of men on a crew, on these local trains and on the through freight trains in the two territories.

Witness made no special inquiry as to whether or not in either territory there were State laws governing the number of men to constitute a crew. He thinks he is correct in stating that the consist of the crew for a local freight is the same in the two territories.

Referred to his Exhibit No. 19 and his Exhibit No. 22, and to his testimony at page 95 of the record, that the train speed for local trains is only 7.8 miles per hour, in New England, is a necessary result of the congestion; the difficulty of operating local trains in the congested section of New England, and asked whether, if it appears from his Exhibit 22 that the reverse situation is true as to the speed of trains as a whole, namely, that the speed of freight trains as a whole in trunk line and C. F. A. territory is less than
437 in New England territory, is it not equally fair to conclude that that is due to the greater congestion in Trunk Line and C. F. A. territory as a whole, the witness said:

"My statement referred to local freight service, and did not apply to the freight service as a whole. Therefore you cannot draw any conclusion from that statement in applying it to the service as a whole."

Asked whether he could think of any reason why congestion would slow up his local trains more than it slowed up his fast trains and through trains, the witness said:

"I did not mean to emphasize congestion. Possibly that was an unhappy word to use. I did not mean abnormal congestion. I meant natural congestion, congested facilities, not an accumulation, but the density of junction points—all of those things that I talked about that slow up local freight service more than they slow up through freight service. It is much more difficult to handle the very heavy local freight service than it is to handle the through service. The amount of local service is, I believe, greater in the rest of the Eastern district than it is in New England."

Witness is familiar with the basis on which the division between the allocation of property investment to freight and passen-
438 ger was made in the Railway Mail Pay case. He has adopted that same basis for his Exhibit No. 20. He is not familiar with the fact that the division of property investment, as between freight and passenger, in the Railway Mail Pay case, was made under instructions from the Postmaster General, which permitted each carrier to handle the expenses that were common to passenger

and freight in such manner as it customarily did handle them; that the Postmaster General gave no definite arbitrary rule for dividing of unallocated costs, but simply left it to each carrier to apply whatever basis of dividing such property investment was customary in the accounting of that carrier. His interest in the Wettling exhibit had to do with studies that he had made from time to time on the various bases for dividing operating expenses. He does not recall that Mr. Wettling's Exhibit No. 10, which he had, shows the property investment. If it does, it escaped his attention. He does not know what basis was used, nor what was authorized. In fact, if he had known, he would not have gone to the trouble of making this. He was stumped for some way of dividing property investment for use in this case.

Asked whether he thinks the method he has adopted in this case is a safe guide as to the property of the total investment that
439 should be assigned to the two classes of service, or whether he knows of any better, the witness said:

"I surrounded it with all the qualifications that I could think of, because it is not a scientific basis. I know of no better. I have only one authority back of me in the use of that, and that is that Price-Waterhouse & Company used it in the Railway Mail Pay Case in making a separate study for the New York, New Haven & Hartford Railroad. That was the only time that I know of property investment being divided on an operating expense basis. I say that this is merely indicative, but I would not back it up too strongly. I would be very glad indeed to adopt any other basis that is better."

Witness is not aware of any basis prescribed by the Interstate Commerce Commission. Witness' separation was based upon the plan of division and that was in turn based upon April, 1917. April, 1917, was a normal month.

Witness tested the relative increases in passenger revenue, as compared with freight revenue, since then, and found that the percentage of increase as worked out on the Boston & Maine was substantially equal in the two classes of traffic. He took the Boston & Maine because he had the figures at hand to do it.

Asked whether he thinks, in view of the fact that such
440 a large proportion of the New Haven revenue is passenger, the same parity of increase would obtain as to the New Haven statistics, the witness said:

"That is very easily ascertained. If it is shown that the percentage of increase in the two classes of traffic were not proportional, it would add another qualification to these figures. I do not think, however, that the figures will show it. I did not make such a study myself, except that the Boston & Maine figures were handy, while I was writing that exhibit, and I tested it in that case."

Witness has a very serious criticism to make of undertaking a division of the property investment based on the relative train miles rather than on operating expense. Train mile is an entirely different animal on different roads. A dollar of operating expenses is the

same thing on different roads. Undertaking an allocation of the property investment as between freight and passenger based on the comparative freight train and passenger train earnings would be just a little bit less defensible than witness' basis. Witness says his own basis is subject to very many qualifications. The operating revenue basis would be subject to greater qualifications, because you would be reasoning in a circle. If you increase your operating revenues in passenger service, then that automatically would
441 increase the property investment charged in passenger service.

Witness did not say that any basis that he knows of is unreliable. He said it was subject to qualification, and was submitted as being merely indicative. He has adopted this basis of dividing property investment as the best one he knows about. If he had known of a better one he certainly would have used it.

Referred to his Exhibit No. 22 and his Exhibit No. 23, dealing respectively with freight train performance and freight locomotive performance, the witness says that those exhibits do not depend at all, so far as the comparison between New England roads and the Trunk Line and C. F. A. roads is concerned, on the circumstance that the average loading per car in the New England territory is less than in the territory west of the river.

Referred to Exhibit No. 23, and asked whether, when he determines the gross ton miles per locomotive mile and the net miles per locomotive day, one of the most significant factors is not the fact that the average car load is less in New England than in the territory west, the witness said:

"Yes. I will agree with you that it is of great significance, but that is not the way you expressed it in your first question.
442 It was stronger than that in the first question. I will admit it is of great significance."

The difference in the average loading is due to the difference in the character of the traffic, to a smaller amount of coal. Witness has not any information which would enable him to separate the local from the interchange so as to determine the extent to which that important difference reflected in those two exhibits grows primarily out of purely local traffic in New England. There is no such data available, because the car records are not kept separate, as between local movement and interline movement.

If it should happn that a large preponderance of the traffic on which the average loading was low consisted of local traffic in interchange, that would affect the showing of the exhibits. The witness does not know how much.

Referred to Exhibit 22, the fact that the train movement in trunk line and C. F. A. territory is slower, and that there are more cars in the train on the average, should be taken into account in connection with the exhibit before you get any reliable comparison of the freight train performance in the two territories. All factors in connection with train performance ought to be taken into account in analyzing the final figure. The train load is shown in Exhibit No. 22. The train load is much more significant than the number

443 of cars. The train load is given as 492 tons in New England, and 857 in trunk line and C. F. A. territory. The New England load is only 57 per cent. of that of the trunk line. Looked at from the view of yard switching and yard and terminal operations, the number of cars in the train rather than the number of tons in the train is the important thing.

Witness still maintains that looking at it from the viewpoint of train operation, they should first look at the number of tons rather than the number of cars. Witness has no information as to the relative ratios for the guaranty period. The figures in Exhibit 24 were made up along in July. It was then expected that these negotiations would be under way at that time. Witness has no statistics as to the guaranty period, and has confined his studies to periods back of that, for two reasons. The first is that the figures were available in the summaries of the United States Railroad Administration, compiled by one office force under common methods, and therefore are comparable as to bases. The second reason was that the period of the guaranty was so upset by abnormal conditions, first, the storm conditions in the early part of the year, and then the outlaw strike, which did not affect the two territories in equal degree, that it seemed to witness that the indications would be very much more reliable from performance a little while back, under conditions which,
444 while not normal, were very much less abnormal than those of the guaranty period. If witness had the figures for the guaranty period, and they showed that the operating ratio of the New England roads had increased to a greater extent than the operating ratio of the roads west of the river, that would not necessarily be evidence to his mind that the relative cost of operation of the two groups had increased faster in New England than in the group west of the river. It would only be a starting point for investigating why there was such an increase. The degree of maintenance work might influence them very much more than what we ordinarily term operating costs.

Witness cannot safely conclude anything without analyzing the ratio. The ratio in itself may be absolutely meaningless. It is a starting point for making an investigation. It is a net result; but so far as indicating what caused that result is concerned, it is valueless. It is valueless as giving the cause. It states the result. You have to go back of that to find the cause. Therefore, you could not conclude anything from that result, as to cause, without a special investigation. On its face it would tend to show a greater increase in cost or a greater decrease in revenue. The operating ratio is the resultant of two factors. One is the operating revenue. The
445 other is the operating expense. A change in either one affects the result; but, from the result itself, you cannot tell which one is effective until you find out.

Referred to his Exhibit No. 27, witness is not sure how the fuel cost was divided as between locomotives in freight service and passenger service, as to engines used in the joint service; but, ordinarily speaking for two of the roads,—the charge is made at the coaling station as the coal is placed on the engine tender, and an arbitrary

division is made in charging to the freight and passenger service their proportion of the coal used by engines in joint service. Witness does not think it would be a factor, however. The amount of coal used by joint engines is a relatively small part of the total. His guess is that those figures were arbitrarily divided in a small part of it, and in the other part they were charged out in the accounts as the coal was loaded, either on freight locomotives or passenger locomotives at the coaling station. The figures were sent to him on request from individual roads.

Referring to Witness' Exhibits Nos. 16 to 29, he made no study comparing an individual road in New England with an individual road or roads outside New England. His studies were undertaken entirely from the viewpoint of group comparison. He did
446 not undertake a study of individual roads. He made no study of any particular localities or groups of roads inside C. F. A. or trunk line territory. He made no study of comparative operating handicaps in the State of Michigan and in the New England territory. Referred to his testimony regarding the terminal expense and the abnormal amount of switching, yard switching, and so on, shown by his study of the New England situation, especially the New Haven, and asked to state whether or not that expense could be reduced materially if the property investment were added to,—in other words, whether these numerous freight yards which caused two or three terminal handlings on some of the traffic capable of being merged into a few larger classification yards, which would result in a reduction of the abnormal terminal expenses to which he had referred, the witness said:

"Undoubtedly. There is room throughout the entire New England district—that is, the district of heavy transportation activity—for profitable investments in terminal facilities. But the roads have not had the money."

Asked whether it is not true that the abnormal terminal expense to which he testified is in a measure due to the failure of the carriers in southern New England to consolidate the yards and secure that greater efficiency that he thinks is possible, the witness said:

447 "In answering that question in the affirmative we would have to go back of it to find out why they failed to do it. The reason for the New England roads, and in fact all the railroads in the country, not keeping up that policy of always being ahead of the traffic, lies deeper than your question would imply. I would rather not go into that phase of it, but I think that the New England railroad executives have done the best that they could do with the financial facilities at their command."

In answering these questions, the witness cannot speak with familiarity as to the increased efficiency that would be secured by the completion of the Cedar Hill yard. That development was made since he left the New Haven road. He should prefer to have a New Haven witness express an opinion on that.

Asked whether, in his opinion, the abnormal terminal costs concerning which he has testified are not attributable in part to the use of numerous little yards that have been in place for a generation, whereas the appropriate and efficient thing to do would be to handle the traffic through larger yards, such as Cedar Hill and Providence, which have been planned and contemplated for several years, the witness said:

"That is quite true; but New England has no monopoly on
448 such instances of that kind. You will find them in your own territory. The only difference between your own territory and New England is that New England has them in greater degree; but you have the same kind of things."

Asked whether it occurs to him that the increased efficiency which he sees the possibility of would be within the reach, for example, of the New Haven, if its fixed charges payable annually for non-railroad activities were available for securing transportation efficiency, the witness said:

"They would help some."

Witness does not know whether the cost of putting the Cedar Hill and Providence yards into shape for final use would be $10,000,000. That sounds reasonable.

Referred to Mr. Pearson's statement in his annual report to the stockholders, as follows:

"Inadequacy of capacity results in congestion, delayed trains, and necessitates much extra work and duplication of endeavor to accomplish the final result."

and asked whether that had been his observation, the witness said:

"I think that is correct."

Asked whether the abnormal terminal expenses he has described were, within his observation, partly due to the very condition
449 which Mr. Pearson calls attention to, the failure of the New Haven to consolidate those smaller yards into modern classification yards, the witness said:

"If I could substitute one word, and say it was the inability of the New Haven road to do it, I would agree with you."

Redirect examination:

Whatever amount might be spent at Cedar Hill or Providence for improving the yards there would not change the inherent characteristics of the New Haven traffic. It would ease somewhat the burden of operation. Both these yards are on the main line between Boston and New York. While they might facilitate to some degree the handling of business on that main line, they would still have all these branch lines and small yards and small places to consider.

Referred to his Exhibit No. 16, although it omits the Boston & Albany and the Grand Trunk is put in, it does give an accurate representation of the conditions of those 7 lines which are petitioners in this case, and of the comparison betwen their forlorn condition and the prosperity of the trunk lines. Witness was influenced in comparing New England with the other region, by the way the regions were handled in Ex parte 74. The general characteristics of lower density, greater frequency of junction points, and immensely greater number of branch lines to miles of road, being characteristics of the New England roads which were peculiar
450 to them different from the characteristics of the roads west of the Hudson did influence the witness in his characterization of the New England roads as a group.

Those are characteristics of the New England roads as a group which were separated in the beginning of the presentation of the request for increased rates. New England was considered as a unit; then later it was merged with the rest of the eastern district. Referred to questions asked by the cross-examiner indicating that perhaps southern New England should have been treated as a region by itself the witness said that the Boston & Maine comes to Springfield, the extreme southern line of Massachusetts. The New Haven runs up to the extreme northern part of Massachusetts, to Lowell, Northampton and Pittsfield, and the two lines are intermingled in a great part of Massachusetts. It is also true that the Central Vermont runs from the extreme southern line of New England up to the extreme northern line.

For the purposes of this case it does not seem feasible to witness to separate Connecticut from the rest of New England; or Connecticut and Rhode Island. He thinks New England ought to be considered as a group.

Witness' Exhibit 16 includes passenger as well as freight in operating revenues. The operating ratios of the New Haven with reference to freight would not have shown 87.6. The operating ratio of the freight service on the New Haven road is higher than in passenger service and, of course, higher than the average for both services.

Although the terminal characteristics peculiar to New England are more particularly confined to the Boston and Maine and the New Haven than to the other roads in New England, nevertheless there are other factors peculiar to the other roads which do not obtain west of the Hudson, for instance, the tremendous increase in payroll caused by standardization of wages, the tremendous increase in the cost of coal and the cost of getting it there, as well as per diem, and difficult winter operation operate to the same extent on the
451 roads west. These factors may work quite as much to the disadvantage of the roads other than the Boston & Maine and the New Haven as do the peculiar terminal characteristics of the two roads last mentioned. Witness has in mind a study made of the Maine Central during Federal control, which indicates that the advances in wages were more than the standard return would be, earned by that road, showing what a tremendous burden stand-

ardization was on that individual road; and the cost of coal for the Main Central and Bangor & Aroostook has been unusually high—over $10 at times. The inclusion of local freight traffic in witness' statistics about Trunk and C. F. A. lines, may also qualify the statistics on those to some extent. Witness so stated in his direct examination: that the factor of local traffic in its effect on operating expenses and operating efficiency was included on both sides in the comparison, and the only criticism that could be directed against it is whether or not the proportion of local traffic in New England was greater than in Trunk Line territory; and if it is greater, as it undoubtedly is, and if it costs more than the through traffic, it would have a qualifying effect on his statistics, and he thinks the record shows that qualification in his original statement.

Asked whether in his opinion the fact that the increase in
452 operating ratio in New England has been greater than it has been in lines west of the Hudson is a reflection of the unusual burdens which have been cast upon them, that were not common to the roads west of the Hudson, the witness said:

"I should hesitate to draw any conclusions from the operating ratios themselves."

The operating ratios and the analyses he has made in his study, backed up by his studies, indicate that they reflect the unusual operating handicaps.

That difference in the average haul of the New Haven, used in the report of 1919, results from the addition of the distance from Harlem River to Bay Ridge on the Jersey Central, which had not been taken into account in previous reports or computations of average haul. The difference in train speed per hour in New England and in Trunk Line territory may, in part, be accounted for by the heavier trainload west of the Hudson. This has a substantial effect on train speed. The haul west of the river is a great many more tons in the same time, and at less expense.

Asked whether, as a conclusion from his study, it is his opinion, based upon the operating handicaps which he has testified existed, that the New England roads are entitled to a larger proportion of the division than they now have, the witness said:

453 "Yes; that is my conclusion."

The witness' studies were made in contemplation of this particular case. He was asked by the New England executives early in the summer or late in the spring to make an intensive study of the operating characteristics of the New England roads with a view to using the information in their efforts to induce the trunk lines to give better divisions. This was prior to the decision of the Commission in Ex Parte 74. These studies commenced sometime in March. At that time the method of procedure had not been decided upon and the use which was to be made of the study was not outlined. It is quite possible that they would have been used by the New England roads in their negotiations with the trunk lines if the case had been

settled by them without coming to the Commission; and his study was made with that object.

Recross-examination:

Witness does not know how to arrange divisions or what changes should be made; but he feels confident that the Trunk Lines under this rate increase authorized by Ex Parte 74 are getting or will get additional revenue, which, in his opinion, ought to come to
454 the New England roads, and their case is justified by the presentation of the greater cost of doing business in New England. In his opinion the return which the New England roads are getting for a unit of business is less than they are justified in getting in comparison with the Trunk Lines.

Witness has an opinion as to the reasonableness of the divisions, formed by the net operating results and a valuation of these unknown factors. It is an opinion. He cannot back it up by any definite proof.

Referred to exhibit 28 which shows that the Bangor & Aroostook paid less for its coal per ton in 1919 than the New Haven, the witness said that the reason the Bangor & Aroostook got its coal cheaper was that it had some long-term contracts which have since expired. That tended to pull down the average charge during that period; but at a given time recently—any recent period—the Bangor & Aroostook was paying more for its coal than the New Haven, and by all logic, it should pay more, because it is farther from the mines and has to pay more for transportation. It is not proper to take figures for a single month, for example, August 1920, in this connection, because such figures may not give the correct information, because the charge in a particular month is an average of the issues made in the previous months averaged up. It is not necessarily the price actually paid in that month.

The addition to the average haul of the New Haven in 1919 was on account of the mileage of the New York Connecting Railroad. Those figures were first shown for 1919.

Adjourned to December 29, 1920, at 10 o'clock a. m.

455 Washington, D. C.,
Wednesday, December 29, 1920—10 a. m.

GEORGE H. EATON, a witness for the complainants, resumed the stand and testified further:

Cross-examination:

Witness has been connected with the Boston & Maine for 33 years, and in that time has been located in New England, and is very familiar therefore, with the traffic and transportation conditions of that section of the country.

During the last 15 years, for example, the New England roads have disclosed these terminal characteristics of which he and the other

witnesses have been speaking. The change, during those 15 years, so far as the terminal characteristics are concerned, has tended toward an increase in the cost of operation.

As a while, witness would say that there has not been any substantial change in the nature of the service performed by the New England roads in their terminal characteristics during the last 15 years. The freight traffic density has not materially increased during those 15 years. Witness would not say it has decreased. Witness cannot say there has been any substantial change during
456 that period in respect of the diversity of routes and diffusion of traffic. Witness cannot say that there has been any substantial change during that period in what was referred to as the short haul character of the transportation service performed by the New England roads. The witness has not any idea as to the amount of money which the plans for the temporary adjustment of the divisions which he suggested would give to the complainant railroads. That has not been figured as a definite proposition. His idea is worked along the lines of an increase in divisions to the extent of $25,000,000. That would be an increase to New England as a whole.

Witness does not know whether the Boston & Albany would be included in that figure or not. He has made no calculation in that respect. His understanding is that New England as a group, which includes the Boston & Albany Railroad, being placed in the Eastern group, has had the effect of giving to the Trunk Lines and C. F. A. lines substantially $25,000,000 more than they would have received.

His plan for a temporary adjustment of divisions, 35 cents on coal, 50 cents on low grade commodities, and $1.10 per ton on other freight, based on the tonnage figures they have presented, would give substantially $25,000,000.

Witness does not know whether the Boston & Albany would par-
457 ticipate in that $25,000,000. He would have to examine the figures. He has not the figures available. He thinks he can have them available. He cannot tell how much, in the same rough method of approximation, his plan would give to the Boston & Maine road. That was not figured, even approximated, that he is aware of.

That plan has been suggested as a plan to treat New England as a whole. It has been suggested without any knowledge by witness of how it would affect the individual railroads. He has not formulated any idea in connection with that plan, of how he would divide that allowance as between two railroads in New England that participated in a particular haul, as, for example, traffic originating at Bangor, Maine.

Referred to his testimony on page 391 of the record, that the existing basis of divisions is merely a mess of inconsistencies, and to his testimony on page 304 of the record, that the divisions were arranged in a perfectly absurd way, witness stated that his opinion as to the absurdity of these divisions and the mess of inconsistencies refers to the grouping and to the mileage allowances.

The witness thinks the grouping is absurd, and he thinks it is very clear on its face throughout the exhibit that when you compare

the earnings, for instance, that the Boston & Maine receives, compare points of origin on the Boston & Maine Railroad, and com-
458 pare the routes, the earnings via the various routes, and also the distances, that it indicates very clearly that the basis that is now made use of is full of inconsistencies. It is the same way with respect to the mileage allowances on which the divisions are predicated. Witness' temporary plan would, for the time being, preserve the blocking system now in effect.

His temporary plan would, for the time being, preserve the mileage basis of divisions, on top of which, however, he would make this further adjustment by transferring the 5½, 35 cents per ton, or 50 cents per ton, as the case might be, to New England. It does not make any difference how inconsistent these divisions are, you cannot absolutely throw them away. They are all there is to work New England revenues upon, and they must be retained in some form or other, regardless of their inconsistencies, because the moment you get away from them you are absolutely lost.

Even if there were a general revision, which would mean the discarding of what they have today, it would place the revenues in danger. Nobody would know whether they would produce as much money as they do today, or more, without a very extensive test.

Witness thinks some basis which will simplify what they have today must be decided upon, but he thinks in that basis, whatever it is, still will be reflected these inconsistencies that he speaks
459 of. Witness does not see how they can absolutely get away from them.

Witness understands that under the law, the problem which the Commission has before it is to divide these rates fairly and equitably, considering the respective values and expenses of the service, and irrespective of the actual desire of either side for a definite amount of many. Witness thinks there would be isolated cases in which his plan would take from the Trunk Lines all of their revenue and they would still owe the New England lines money, and thought perhaps that should be met by a minimum to the trunk lines. He has no suggestion as to what that minimum might property be. Witness thinks, as a general proposition, the division should be something less than the local rate, provided the local rate properly reflects the cost of the service on local traffic.

Witness should say that New England should have something less than the Anderson scale as its proportion. That is because on such traffic, instead of having two terminals, as they would with the local movement, they have but one.

Supposing a shipment originating on the witness' line at Worcester, and consigned to Rochester, and the ton mile earnings are one cent per mile, and another shipment originating at Worcester and
460 and consigned to Denver, Colorado, and the ton mile earnings are 5/10 of a cent a mile, witness does not think the New England lines ought to have the same division necessarily to the gateway. He thinks it is fair that where the ton mile earnings of the through rate are substantially lower, they should participate in the fact that there is a lower ton mile basis of the rate. It would be

proper to take that into consideration in the adjustments of the divisions. It is usually the case, if the rate between two points via the short route is a certain figure, that via a longer route you have to have the same rate, or a lower rate. Otherwise the traffic would necessarily go via the short route.

Asked whether that is a factor which should be considered in fixing the divisions via the longer route, the witness said:

"Well, I think it is a factor in this way, that if the longer route—let me illustrate. Take from Springfield, Massachusetts, to Buffalo, New York, via the direct route, which, we will say, is over the New Haven and New York Central. The long route is through Harlem River and the Pennsylvania Railroad. I think, in an arrangement of the division of that rate, the New Haven Railroad should not take less for its haul to the Pennsylvania Railroad than it would take for its haul to the Boston & Albany and New York Central."

461 Witness thinks the Pennsylvania Railroad should do the shrinking, if shrinking there must be, because the disability, in that case, is with the Pennsylvania Railroad.

If there were an adjustment of that kind, in which the situation were reversed, witness would say the same thing with respect to the New England lines.

Where a road desires to participate in a longer route movement, it ought to assume the result of its disability to move it via the short route. That principle also applies to New England.

Witness thinks that all traffic moving in and out of New England should stand its fair share of any amount that represents increased divisions given the New England carriers. To what extent the specifics north of the gateways or Ohio River crossings should be increased, in respect of the through rates from and to the South, that is, south of the Virginia gateways, witness is not prepared to say at this time. Witness' view is that so far as there are through rates, the traffic moving in and out of New England should share whatever increased divisions the Commission gives the New England carriers. That applies also to carriers west of the Mississippi. He thinks the temporary plan he has already suggested would take care of the situation. It might be necessary for the trunk lines
462 and C. F. A. lines to revise their divisions to some extent with their connections. Witness' thought is that he would first expect the trunk lines to transfer this money out of their specifics, so far as the southern traffic is concerned, and then to perhaps increase their specifics and make greater demands on their Southern connections.

So far as the Western lines are concerned, there are not through rates. The rates are based on combinations on Chicago and the Mississippi River, with the exception of transcontinental rates. The big business involved here is that which originates and terminates in trunk line and C. F. A. territory, and the basis for division purposes, whatever it may be, must be predicated on that traffic, and then the influence of that basis must be extended to cover traffic from the South and from the West.

Asked whether his thought is that after there is this adjustment, the trunk lines and the C. F. A. lines should then demand a greater share out of the transcontinental rates, the witness said: "That is their job." The New England lines look to the trunk lines and the C. F. A. lines. The latter must patch up their own fences.

Referring to joint through transcontinental rates from New England to the Pacific Coast, the witness suggests that so far
463 as New England goes, the through rate ought to be divided by allowing east of Chicago the full local rate. Then New England should receive out of that what the witness has suggested as a temporary adjustment. He has no similar suggestion to make as to the southern traffic. There should be an increase of the divisions of the Boston & Albany Railroad, as a part of the adjustment for New England. This should be done because in this case they are treating New England as a whole, and the Boston & Albany cannot be left out. The justification for increasing the divisions to the Boston & Albany is that the Boston & Albany is a New England line. The Boston & Albany is just as much entitled to increased divisions as the Boston & Maine is, because their divisions are just as unfair, witness believes, as are the Boston & Maine's. The Boston & Albany is a competing line with the Boston & Maine. Witness thinks that its transportation service justifies increased divisions. The Boston & Albany is a parallel line with the Fitchburg division of the Boston & Maine, and the conditions are pretty close.

Referred to the terminal deduction of the Boston & Maine of one cent or two cents, which is now in dispute, and asked how he justifies the terminal deduction at one end and not at the other end of the line, the witness said:

464 "I do not attempt to justify that. I think the terminal deduction is proper at both ends."

This deduction is not in effect at the present time on a great deal of this traffic on which witness' lines receive a terminal deduction. Witness thinks it would be difficult to justify the same terminal at a large city and at some outlying small point, because of the difference in the cost of the service; but the terminal of one cent has heretofore been allowed the Boston & Maine Railroad, and is supposed to have been an average to cover the entire system. It certainly does not cover the terminal expense at a large point like Boston.

Witness thinks that in many instances the terminal expenses at the large cities are substantially greater than at the small outlying stations. New England had a more or less general revision of some of its rates in 1912 and 1913. That adjustment was more or less limited to New England, for instance, in its class rate structure. In fact, it was limited, in the first instance, to the Boston & Maine Railroad, and then it spread in certain measure to the New Haven and Boston & Albany. It did not cover the entire New England territory. That advance, however, did not affect the other points of official classification territory. At that time the class rates were raised, and

also some commodity rates were eliminated. The general
465 level of the rates was raised on the Boston & Maine Railroad.

The New England lines have participated since that time in the various general advances, 5 per cent, 15 per cent, General Order No. 28, and the 40 per cent. They also have had some adjustment of their rates under the Anderson scale, and that was upward. That advance was limited to New England. The Anderson scale worked both ways, but the general result was an upward revision. It was practically limited to New England.

Referred to his Exhibit No. 43, the first page, the rate from Johnsonville, N. Y., to New York City, the first class rate, applicable in both directions, is 74 cents. As he looks at it these divisions should be treated as a whole, but if this one is to be treated individually, witness does not think that rate is now properly divided. He thinks the Boston & Maine ought to have a little higher percentage of its Anderson scale. Speaking of this particular rate, he would say that a proper division would approximate at least 80 per cent of the Anderson scale. That would give the Boston & Maine 33½ cents.

Witness' proposed temporary adjustment would apply to this rate, but witness was dealing with the rates as a whole, and as an average. Asked to deal with it now as a particular rate, and to say whether the addition of 5½ cents to the Boston & Maine proportion would be proper, the witness said:

466 "If you will take that, then I will admit that, in my judgment, that perhaps would not be a fair division of the rate, because the haul of the Boston & Maine Railroad is so short, being only 16 miles, and it has no substantial terminal service at Johnsonville."

Witness' answer as to the sixth class rate, 22½ cents, is the same as to the other. A proper division would give the Boston & Maine 75 per cent of the Anderson scale, which would be 9 cents, or one-half cent more than the present division. Yet, under witness' general plan, they are asking for 5½ cents more, which would give them 14 cents, or 2 cents more than the Anderson scale.

Witness thinks there should be a relationship of some sort between the amount the New England lines receive of the division of the through rate and the Anderson scale for the same distance. He cannot say what that relationship should be, but the exhibit shows that the relationship varies. There is no uniformity. It should be worked out in such a way as to produce uniformity. Some attention should be given to the earnings of the New England carriers under that Anderson scale. They are not entitled to the full measure of the Anderson scale, but they are entitled, it seems to the witness, to some uniform percentage of that scale, as measured
467 by distance.

Witness has not made any figures as to what percentage of the Anderson scale, as a measure of these divisions, would produce the revenues for the New England roads which witness contends they should have.

In answer to Mr. Bikle, he gave merely a snap judgment on that particular rate. There are instances in this exhibit where the division received by New England carriers is probably a fair division, in spots. There are other spots where the divisions are unfair. But, taking them as a whole, they are not fair to the New England carriers.

Witness thinks the division for the New England carrier, where it is the long route between the gateway and the competitive point, should be measured on that distance, and that the division for the short line carrier should be measured upon its distance. The divisions to the New England roads are not today the same via the different gateways, and witness does not see that that is absolutely necessary as between the specific points.

Witness cannot think of any instance where it would be necessary to give any attention to that situation.

In revising these divisions it would be a very difficult matter to know whether or not the revised divisions would produce as much revenue as the present divisions. As an expert traffic man,
468 the witness, to determine whether or not the revenue would be more or less, would take up the traffic for a given period and make the test. He knows of no other way for this Commission to determine it, except in an arbitrary way. He thinks the Commission might well fix a temporary basis such as he has mentioned, and then make the test. Witness' temporary basis would work out, and, upon a rough test, produce $25,000,000, based on the tonnage in the exhibits already introduced.

Witness thinks that there is no getting away from the divisions as they have them, without a very long and tedious study, and a great many test applications in order to determine whether or not the revenue would be more or less. He thinks that the simplest proposition is to take an arbitrary basis, first, merely as temporary, and then supersede it by some simplified plan worked out and predicated on what exists today. Witness has no plan other than that already suggested as a way out of this difficulty.

The plan involves, first, a temporary one, by the use of arbitrary deductions or terminal deductions, to be followed by simplified per cents worked out on a road-to-road basis. The road-to-road per cents would reflect revenues which are produced by the divisions basis that is in force today, so that the the road-to-road per cents would
469 reflect these divisions exactly. The road-to-road per cents would be obtained in this way, citing some western road, the Wabash Railroad, moving traffic into New England via a number of routes. All of the revenue from the Wabash Railroad to New England and the revenue accruing to intermediate carriers, would be lumped. Then the New England part of the revenue, and that part of the revenue accruing west of New England, would be cast into percentages. That would represent a road-to-New England per cent. Being worked out on the basis of revenue, and the revenue having been obtained by the application of these divisions, it seems to witness that there would be a simplified basis, although the inconsistencies which exist today are reflected there. Witness imagines it would take 3

or 4 months to work out the road-to-road per cents. At the outside, that should be worked out and agreed upon by all the carriers that are parties to them, in six months. During Federal control it was done in very much less time than that.

Witness cannot see any difference in the principle in the road-to-road per cent plan and the block mileage plan they have today. Today a railroad is divided into a certain number of blocks; it may be anywhere from two to ten blocks, and certain fictitious or constructive mileages applied to each block. The road-to-road per
470 cent plan means that you put a railroad into one block. The principle is just the same exactly. The fictitious mileages now used are purely arbitrary.

Referring to a set of maps that were introduced, showing these so-called blocks which the witness has termed mileage blocks, in New England, very graphically set out in colors, but differing dependent upon the route apparently, and dependent upon the roads participating, and taking the one at the top, where there is a so-called mileage block that includes all of the lines in red, and then skips over all the lines in blue, and takes in some more in red, witness said that that has nothing to do with mileage; it shows that those blocks were made arbitrarily. It is a basis of a trade. That happens to be the New Haven map. The New Haven Railroad got what they could in the trade, and when they put the trade on paper that is the way it shows up. These so-called mileage blocks have absolutely no relation to the service performed by the individual carriers, and neither do the divisions in force today reflect the cost of service, except in a very small matter, where the terminal deduction is allowed the New England lines.

The road-to-road per cent plan would eliminate the necessity of dividing the specific rates on a definite basis, and would apply to all traffic. It might be necessary to work out a road-to-road per
471 cent on a particular kind of traffic. Witness has coal in mind. He thinks it would be proper to work a road-to-road per cent applying to coal. A road-to-road per cent division of revenue is not predicated in the actual establishment on the division of specific rates, except as those divisions which exist today are reflected in the road-to-road per cent.

Witness would find out how the revenues were dividing under the present divisions, and finding what the percentage is of the total revenues received by two lines participating in a given amount of joint traffic, would decide whether to increase the one percentage or lower the other percentage of that pooled money. The use of the present basis of divisions would be to get light on about what was the present distribution of the gross sum; and after getting that, witness would disregard thereafter the divisions of the specific rates. These divisions would apply on all traffic.

Witness would not expect to receive on traffic to the gateways the same percentage of the Anderson scale, regardless of the distance it moved beyond the gateways. He thinks if the percentage of the An-

derson scale is to be used as the basis of division, there must be a zoning of the territory west of the Hudson River.

472 Witness has it in mind that a proper division for the Boston & Maine Railroad, on traffic interchanged with the trunk lines, would be about 80 per cent of its local class rate, but on the long distance, that would have to be shaded some. In the instances of the first class rate of 74 cents between New York and Johnsonville, witness' conclusion that about 80 per cent of the Anderson scale was right, was merely a case of snap judgment. They have divisions with the coastwise lines working out of New England that are based on a percentage of the local rate up to the port. To-day it runs about 70 per cent. So that is not a new method of making divisions.

In witness' suggestion of the arbitrary basis 5½ cents on the sixth class rate, that would give the Boston & Maine 14 cents. That would mean that the Boston & Maine, for a haul of 16 miles, would get 14 cents, and the New York Central for a haul of 146 miles would get 8½ cents. Witness does not think that would be fair. The difference between the terminal services performed by the New York Central in New York City and those performed by the Boston & Maine at Johnsonville would have to be taken into consideration. Johnsonville is a very small country place. It produces milk. New York terminal service is very expensive. Witness thinks that 13½ cents would be a fair compensation to the New York Central for its service. He does not think it is too much.

473 Taking the next rate, New York City and Keene, the Boston & Maine division out of that rate is 14½ cents on sixth class traffic. Dealing with the specific rate, witness would say that was an instance where the division is a fair division. The Boston & Maine receives less than 80 per cent of the Anderson scale. In that specific instance the witness does not think the Boston & Maine is getting too much. It leaves the New York Central 9½ cents for its haul from Troy to New York City.

Referred to his testimony that 13½ cents was a fair division for that haul on business from Johnsonville, the witness said that where the mileage is extended, is increased east, of course that proportion will shrink. The question of what the lines west of the river should receive is affected by the point in New England from which the traffic comes, just as the traffic east of the river would be. Keene is a manufacturing country town. It is not very large. There is quite a tonnage, not a heavy tonnage. As compared with New York City, the terminal expenses are relatively low.

Asked whether, with 122 miles to the Boston & Maine and 146 to the New York Central, and a great big city like New York at one end and a small town like Keene at the other end, the Boston & Maine ought to have more money than the New York Cen-

474 tral by practically 50 per cent, the witness said:

"When you are dealing with a specific rate, perhaps not. I say that this exhibit discloses divisions that are in spots perfectly fair to the New England carriers. Perhaps there are instances where

they might be considered a little bit more than fair, and you can pick out those individual cases. * * * You have picked out probably the most favorable."

In proposing his tempporary plan witness had not considered the effect on specific rates, and his purpose was to give a quick method of apportioning that $25,000,000 that, under his theory, the other lines in the Eastern group have gotten by virtue of the inclusion of New England. Witness does not claim that the arbitrary deduction is in all cases a fair method. In individual cases it is bound to work out unfairly in many instances; but he offers it merely as a temporary proposition.

Fitchburg is a large manufacturing city. The terminal expenses of that city, taken as a whole, and compared with New York City as a whole, are somewhat less per unit. Taking the third rate, between New York City and Fitchburg, the haul of the two lines east and west of the gateway is substantially the same in distance. The
division of the Boston & Maine out of the 74-cent rate first
475 class is now 40.60 cents; the lines west 33.40 cents. Witness
thinks that is unfair to the Boston & Maine when you get 45.8 from Keene for a lesser haul, 122 miles against 140. The Boston & Maine should have at least as much money as they get from Keene, which is 45.8 cents.

The New York Central earnings, comparing Johnsonville, Keene and Fitchburg, must fluctuate according to the distance, according as the distance fluctuates within New England.

Considering the rate to Concord of 84 cents first class, the witness said that as it stands, he would say that that was a fair division. He would say the same about the sixth class rate. In each instance the Boston & Maine is now getting about twice as much as the lines west of the junction for about one-fifth more of a haul.

Taking the second page representing traffic on the Pennsylvania, and the through rate between Concord and Newark of 84 cents first class, and asked what he thinks of that division, the witness said:

"Well, I do not know that I can say that it is an unfair division."

Asked how about the rate on sixth class, the witness said: "Nor that."

Taking the first class rate between Concord and Philadel-
476 phia, witness would say there is nothing improper in the
present division. The present division as to the sixth class rate is a fair division.

Asked whether there are any rates on that sheet that he thinks are improperly divided, the witness said:

"I have not made a study of these individual rates by themselves. I have made a study of this division proposition as a whole; and, as I have before stated, there are spots as shown on this exhibit indicating that the division is a fair division."

Asked whether he could say that the divisions on page 4 are unreasonable to the Boston & Maine, the witness said:

"Taken by themselves, no."

Asked whether he was prepared to take any of these exhibits and refer to the rates that he thinks are improperly divided, in and of themselves, the witness said:

"As I have said, I have not attempted to deal with this problem as to individual rates. I do not think it can be dealt with that way. It has got to be dealt with as a whole."

Witness is not prepared to refer to the rates that he thinks are improperly divided in and of themselves. Witness has no plan for zoning the Western territory so as to provide for the application of varying percentages of the Anderson scale, according to
477 distance.

Witness' ultimate proposition is not merely to establish a road-to-road percent between one road and another road, but after going through this mathematical process to establish a road-to-New England percent for the whole New England group.

If the road to road percent is worked out for New England as a whole, witness does not think the character of the traffic would materially change it in any way to affect the percentages. It would not make any difference how the traffic came into New England. It would be the same percentage of the rate regardless of the route. There might be a fluctuation as between the Boston & Maine and the New Haven, but taking New England as a whole, there would be no fluctuation of traffic.

He has not any method for distributing that interchange revenue as among New England lines. That is a matter of agreement.

All the New England roads would take the New England percentage, and it would be applied west of the river from individual road to individual road.

Witness thinks that the New England group, in this proposition, might well include the Boston & Albany, the Grand Trunk and the Canadian Pacific. He does not know how much of the total the Boston & Albany would get.

Referred to exhibits which contain some statistics with regard to groups like the Indianapolis group, the Cincinnati group, and so forth, and asked whether he had made any study of tonnage to any one of those groups that would indicate how the revenues are actually divided between the New England lines and the C. F. A. lines, particularly at the present time, in relation to the amount of service performed, the witness answered in the negative. Witness has not made any study of lines in Central Freight Associa-
478 tion territory that originate traffic—perform the originating terminal service—to indicate how their earnings compare with a mileage prorate on the business. The exhibit here includes all earnings west of the Hudson River, and does not state specifically what the originating lines get. Witness has made no comparisons

on the earnings of the originating line compared to their local rate for the same haul.

Redirect examination:

The Boston & Maine would be able to raise a very small amount of revenue from the adjustment of the subnormal rates which have been referred to. He should say that the full measure of the Anderson scale might give the Boston & Maine Railroad within $100,000, as a rough guess. He has given it some thought, but it is an exceedingly rough estimate. The witnesses have referred here before the Commission and the Examiner to certain subnormal rates outside the application of the Anderson scale. It is his view that they would not obtain in excess of a quarter of a million dollars if all of these so-called subnormal rates were increased. Witness anticipates that every attempt to increase these rates will bring forth a suspension of the tariffs and subject them to a hearing, and that there will be opposition from New England industry. Witness does
479 not know how much to anticipate they might get from an adjustment of trip ticket rates. He has not made a study of the passenger matter. He has heard their passenger people state that there might be a substantial increase, but what it would be in dollars and cents they do not know. They cannot tell. From the two items of adjustment of freight rates $350,000 is all the witness can see.

Witness feels and believes that the divisions which his road receives on its trunk line business in the main are not fair.

In preparing these sheets of exhibits, witness has attempted to present a fair picture, by selection of typical rates and divisions, of the whole situation on the Boston & Maine Railroad, as related to its connections. He has made an effort to show a picture here of the divisions as a whole.

The temporary measure of relief suggested by witness was coupled with the suggestion that those unit figures of a cent and three quarters, two and a half cents and five and a half cents should be translated into figures which should be applied by way of deduction before prorating. If that is done, the proportion of the New England lines would rise and fall depending upon the length of haul which the New England lines contributed, and the hardships pointed out by the cross-examiner in the strict application of transferring so many cents from the division of the lines west of the Hudson to the lines east of the Hudson would not show up so prominently. They would bear upon the New England lines in the same measure that they would bear upon the lines west of the Hudson.

Witness has not been working at the end of the proposition as to what the New England would do with this money if they ever got it. He has left that to the executives.

Witness does not believe that it is any reason for not giving to New England increased divisions, if they are entitled to them, simply because they have not worked out to the last cipher a definite plan of how they would divide them if they got them. In the

application of the so-called arbitraries, witness computed that they should yield about $25,000,000. That was by applying them to the 34,000,000 tons which is interchanged by the roads, eliminating the Boston & Albany. If the Boston & Albany were included,
480 the arbitraries could be lower.

Dealing with traffic between New York and points on the Boston & Maine, the traffic between Boston and New York City is very much more than all the rest put together.

The first class rate is 74 cents. The Boston & Maine gets 40.60. The lines west get 33.4. The Boston & Maine haul is 190 miles, and theirs is 146 miles. There is no terminal arbitrary deducted for the benefit of the Boston & Maine. The Anderson scale for the Boston & Maine haul of 190 miles would be 2.5—2½ cents, and they get less than half of that. Adding 5½ cents to the Boston & Maine share of the first class rate would increase the Boston & Maine's share to 46.1, and would reduce the lines west from 33.4 to 27.9. Witness sees nothing unfair in that division, even based upon the old idea that mileage is the sole determining factor.

The making and division of rates that witness has participated in in the past has been predicated entirely upon mileage. That is the only basis that has been used up to this time.

Of the divisions applicable to these rates, none of them has been made on the basis of actual mileage hauled. Witness has not ever recognized for any substantial period, as a traffic officer, that actual mileage was or ought to be the controlling or the prime factor in the division of rates. When witness talks about mileage, he is not talking about the mileage performed by the carriers, parties to the rates. Witness has not distinguished between actual miles
481 and constructive miles. New England divisions are not based upon actual mileage, and never have been, that witness can recall. There may be individual cases where they are. Witness does not now believe that they should be. Witness did not ever believe that they ought to be divided on a mileage, an actual mileage prorate. Witness was brought up in the school that believes that divisions should be based on mileage, but not actual mileage. The particular rate from Boston to New York via Troy, is divided absolutely on the basis of mileage. So far as the Boston divisions apply via Rotterdam, Mechanicville or Troy, they are practically all of them divided on the actual mileage. They may be a mile or two off. The Boston & Maine on their first class from Boston to New York, get a cent a hundred pounds less than the actual mileage prorate, and the carriers west get a cent more. The witness did not have anything to do with the making of these divisions. They are beyond his time. The distance from Boston to New York via the Harlem River is 207 miles. The route via Troy is approximately 50 per cent. longer than that via Harlem River. That fact has nothing to do with the division of this rate via Troy. The rate is the same via both routes, but from interior points there is a difference. It has been the practice to maintain the same rate via Troy and via the New Haven Railroad.

Asked whether, without going into detail, through the various sheets shown on his exhibit, there are a large number
482 of instances on both sides of the line, that is, instances like those which Mr. Bikle had called to his attention, and an equal or perhaps a larger number of instances where, on the traffic which moves in the greatest volume, the New England carriers are suffering considerable disadvantage, the witness said:

"I think that is true, yes, sir." And the Boston divisions are particularly pointed out as typical of those.

Asked whether there is anything peculiar, or whether he can say anything in explanation of why the divisions from inland points such as Keene, Fitchburg and Concord differ somewhat in the results, the witness said:

"On those interior points the Boston & Maine receives its division of the rate before prorating." And that is included in the computation.

The historical feature is that when the Boston & Maine leased the Fitchburg Railroad and opened up its entire territory to the trunk lines by way of Rotterdam and Mechanicville, it was enabled in its trade to receive this larger block mileage for its interior points, plus its terminal deduction, than had obtained on the main line of the Fitchburg Railroad. It would be true to a certain extent that from their local points they would be able to get larger proportions of their rates than they would from competitive points; but on the Fitchburg Road there are points which are not competitive,
483 and at those competitive points the Fitchburg Railroad did not receive, nor does the Boston & Maine receive today, this terminal deduction. It does receive compensation based on mileage, but it does not receive the terminal.

To places like Concord, N. H., the divisions were established before the Fitchburg Railroad had been leased by the Boston & Maine. They were established in connection with the New York Central by way of the Boston & Albany route through Worcester, Massachusetts. The traffic does not now follow that route. It follows the route of the Fitchburg Railroad to Rotterdam. The mileage upon which the rates are divided is the old mileage which the traffic followed at the time the divisions were established. That is an illustration of a rule where there now appears to be constructive mileage allowed to the Boston & Maine. The history of it is that the traffic originally moved via a longer route than that via which it now moves,—somewhat longer, but not materially so.

Witness' suggestion as to the method in which the New England divisions might be fairly enlarged, assuming that the divisions established by the road-to-road percents were fair and accurate, is by increasing the New England percent by a sufficient amount to
484 properly measure the increased revenue that should come to New England, leaving their share as an increased road-to-road percent. In other words, witness' plan would be that if the Commission should see fit to make use of these road-to-road per cents., as a method, if they should say to the New England roads that the New England divisions might be increased 5 or 10 per cent., or what-

ever the amount might be, using that merely for illustration, and put it up to the railroad men to work that out, it could be done. A formula would have been provided by which the relief could be put into effect by the use of these road-to-road per cents.

The benefit, in witness' judgment, which results from the computation of a road to New England per cent., beyond what would be obtained from a road-to-road per cent. is that it has the effect of treating New England as a whole. If the road-to-road per cent. was used, then the percentage that would accrue to each New England road would vary; whereas, by using the New England per cent., then the percentage of the rate that accrues within New England is the same via all routes.

The adoption of a road to New England per cent. would involve some further computations, a re-working of the road-to-road
485 per cents. They certainly would have to be re-checked and brought up to date.

Then, if that method were adopted, they would have to suggest some method of dividing the increase after they had gotten into New England. Witness thinks that that is perfectly possible. The Boston & Maine passenger fares are now based upon 3.6 cents per mile, except as to certain commutation tickets and trip tickets already referred to.

With the exception of these subnormal rates that have been referred to, witness does not anticipate it as being possible to get any increased revenue from local rates without determined opposition. He does not see how it is possible to obtain increased freight rates without a very decided opposition on the part of the New England public. In fact, he thinks it is very dangerous to attempt to increase the level of the New England rates materially above the trunk line level, because it seriously affects New England industries.

Witness does not think that New England rates should be materially higher than the trunk line level.

Except for the $350,000 which he has spoken of, and whatever sum might be realized from increasing the rates on these trip tickets, if that can be accomplished, there is no other source from which they can get their needed revenue, except from making these
486 divisions fair and equitable. The increase must come from the interchange traffic.

The terminal characteristics of the New England roads, although they are the same as fifteen years ago, involve proportionately heavier expenses of operation at the present time than formerly.

Witnss thinks that not only the length of haul but also the other features required by the law—the cost of service for example—should be taken into consideration in determining divisions. The road with the short haul must distribute its terminal charges over that short distance whereas the road with a long haul has more miles over which to distribute its terminal charges.

Recross-examination:

Referred to the proposed method of distributing the recovery in this proceeding, which the witness contemplates, and asked whether

his suggestion contemplates an increase of revenue to the Boston & Albany initially, the witness said: "The Boston & Albany should share."

Witness has no plan for dividing the sum that they contemplate receiving. It must be divided, that is true. He has not conferred in any way with the Boston & Albany as to how that shall be done.

Earlier in this proceeding a deduction, before prorating, of 60 cents a ton in favor of the New England lines was talked of, rather than a graded arbitrary. This arbitrary of 35 cents per ton, if deducted after prorating, must be increased to 54 cents per ton before prorating. The arbitrary of 50 cents per ton must be increased to 77 cents per ton if it is to be deducted before prorating, and the $1.10 per ton arbitrary must be increased to $1.70 per ton. If you make those increases in the arbitraries and deduct before prorating, it makes a much simpler method of accounting.

The deduction of 60 cents, initially, was discussed, but in
487 view of the objections which attach to an arbirtrary deduction, it was thought that a graded arbitrary was preferable to an average arbitrary for all traffic. That, in witness' judgment, is what, mathematically, the arbitraries, after prorating, would result in if deducted before prorating. The effect is substantially the same.

By the adjustment of the road-to-road per cents, which he has discussed, witness would expect to transfer into New England this $25,000,000 he has been talking about, and as much more as the Commission finds they ought to have. The road-to-road percentage plant was adopted primarily during Federal control. During that period there was a very great diversion of traffic from normal routes to other routes in trunk line territory. They would have to take, perhaps, the pre-war period, or at least a period when times were normal, in working out these road-to-road per cents. If that were going to be used it would have to be in the light of normal traffic. Witness does not expect ever to see a diversion of traffic to such an extent as occurred during Federal control. If there were a diversion of traffic to other channels of movement, it would cease to be a true index, to that extent.

488 Recess.

GEORGE H. EATON resumed for further cross-examination.

Referred to his Exhibit No. 43, sheet 1, between Boston and New York, witness understands that the New York Central has its own route between those two points in connection with the Boston & Albany. At the time these divisions were made that fact had no bearing on the amount of the divisions which the Boston & Maine should regard as reasonable. That was after the New York Central had acquired the Boston & Albany.

If the division via that route were substantially increased, the New York Central, the witness imagines, would do just as they do today with regard to handling the unrouted traffic. They would handle the traffic via the Boston & Albany. That is their preferred route. There is a traffic that originates on the Boston & Maine

Railroad that moves via Troy. For the traffic in the opposite direction, the favored route is over the Boston & Maine Railroad. There is some, however, that moves via the Boston & Maine route. It is possible that if they increased that division, that traffic, to a greater extent, would be sent over the Boston & Albany. Witness does not think that competition should enter into the making of di-
489 visions. Witness thinks a railroad is entitled to a division based on the service it performs, and the cost of that service.

Witness said that on traffic between Buffalo and Boston he thought that the longer routes should shrink their divisions because of that disability, as compared with the roads operating through Albany. If there is any shrinking to be done, it is on account of competition, of course. He did not intend to indicate that competition ought to affect divisions.

By his proposed method of road-to-road per cents, witness would transfer into New England about $25,000,000. He thinks that is a simplification of the existing divisions.

Witness' exhibit shows that a very large proportion of the interchange traffic terminates or originates in trunk line territory than C. F. A. He thinks that the lines in trunk line territory would stand the greater share of the burden of this transfer if the road-to-road per cents were adopted. Perhaps the trunk lines, if they have the larger share of the business, should share more
490 than to the extent to which they profited by the inclusion of the New England lines. The subnormal rates that witness spoke of increasing include some boot and shoe rates, and some cotton piece goods rates. These are commodity rates. His estimate included increases that they might obtain if all their rates were put on the Anderson scale basis. Witness roughly figures that the full measure of the Anderson scale, disregarding any commodity rates, would give them around $100,000 per annum. That applies to the Boston & Maine. That is the extent to which the Boston & Maine is prejudicially affected by these hold-down rates.

Witness has no idea what they would get out of the interterritorial rates if they were increased in accordance with the Anderson scale; but it would not be a very large amount. They would extend a little further than to Buffalo and Pittsburgh. Witness does not think there is a sufficient volume of business handled under those rates to produce a large amount of money. The trunk lines, he believes, would benefit to a greater extent than the New England lines, by changing those rates.

Considering the road-to-road per cent, witness thinks it is practicable to average the per cents east of the gateway, and not west, because they are treating New England as a whole. Witness
491 does not state, as among the New England lines, themselves, how the interchange revenue would be distributed.

Redirect examination:

The subnormal rates which witness hopes to be able to adjust, have been affected by similar subnormal trunk line rates for like commodities moving to a common market west of the Hudson. For

a good many textiles, shoes, glass goods, and things of that sort, New York has been a common market where New England manufacturers have been competing with manufacturers west of the Hudson.

Whenever New England has tried to change those rates, to bring them up to the proper level, they have always been confronted by New England industry, with a comparison of rates that exist in trunk line territory, and it has been the position of New England industry that they cannot afford to pay higher rates to a big market like New York City, without a similar increase in the trunk line rates to the same market. New England has been ready to readjust its rates if the trunk lines would readjust theirs.

Recross-examination.

All of witness' exhibits referred exclusively to class rates, yet the same divisions, the same percentage divisions and terminal deductions applied to commodity rates as well as to class rates.

Whatever percentage division is determined to apply on class rate traffic should apply equally on commodity rate traffic. There is no uniform commodity rates structure within New England,
492 comparable to the Anderson scale on class rates. The Commission has not gone over the commodity rates in New England as they have the class rates.

If the divisions accruing to the New England lines out of the commodity rates were to bear some uniform relation to the Anderson scale, that would involve, first, the placing of the commodity rates on a basis that bears some relation to the Anderson scale itself. Today they do not. There is no relation whatever between the commodity rates and the Anderson scale. There is no consistent commodity rate structure in New England. Witness' idea is that the commodity rate structure should be made consistent. They should be placed upon some proper relation to the Anderson scale. For instance, if they have a commodity rate which, under the classification, is rated sixth class and is carried on commodity rates within New England, those commodity rates should be revised in order to reflect some proper percentage of the sixth class Anderson scale rate. The divisions that apply to their class rates would automatically apply to their commodity rates.

In speaking, as a temporary measure, of adding the 50 cents per ton to the divisions that now accrue to the New England lines on these low grade commodities, mentioning brick and lime and
493 one or two others, the witness spoke of it as a temporary proposition, and intended to find a quick way by which this money can be transferred.

Some basis has got to be worked out to supersede what we have got, some simplified basis. Witness doubts very much if they can get away from the basis that they have. They can simplify it through the use of road-to-road per cents. But after that is done, this relation to the Anderson scale may not be reflected.

Witness has not come to any conclusion as to what percentage

of the Anderson scale sixth class rates the divisions accruing to the New England lines on those same commodities should ultimately be.

In some isolated cases, an allowance to the New Haven or any of the other complainant lines of 50 cents per ton out of the division now accruing to the lines west of the Hudson River might reduce their revenue a little below the cost of service. Witness' suggestion is that perhaps some minimum might be adopted to preserve that revenue. If this arbitrary is deducted before prorating, they will always have something. There will not be any red figures on their side. True, what money they receive may, in isolated cases, be unremunerative. It may be less than their cost of operation.

494 Asked what the solution would be, if the trunk lines should give the New England lines 50 cents a ton out of their prevailing divisions on cement traffic, and it should appear that it would leave a revenue to them which would be less than their cost of service, the witness said:

"Well, there is not any question in my mind but what they have got the money, taking the traffic as a whole. They might not have it on some particular items of traffic. They have got it, and got more, on other commodities."

Asked whether he feels that they have it on these low grade commodities, the witness said:

"I am taking the traffic as a whole. They are earning more money on their traffic as a whole by the inclusion of the New England lines in the group than they would earn if the New England lines were not in the group. Where that money comes from, what particular lines of traffic, I do not know, except that it comes from all lines of traffic, that handled in and out of New England, and that handled locally."

A very large part of the traffic moving into New England from west of the Hudson River is raw material for manufacture. It moves on commodity rates, part of it.

Asked whether he thinks that on these low grade commodities the trunk lines have 50 cents a ton on all that traffic to give up

495 to the New England lines, or 50 cents a ton to give to them on any considerable proportion of that traffic, the witness said:

"They have something to give up. I do not know whether it is 50 cents, or something more, or something less."

D. S. BRIGHAM, recalled by the complainants, testified further:

Cross-examination:

Witness' Exhibit 6, sheet 2, shows that the only one of the New England roads which did not show a deficit for the year ending October, 1919, was the Boston & Albany.

Witness thinks it is reasonable to assume that if the Boston &

Albany were included in the last column of Exhibit, No. 1, it would slightly raise the per cent. of earnings. He thinks there is no question about that. The inclusion of their income would not increase the average per cent. very much. The Boston & Albany, so far as its property investment is concerned, ranks third among the eight New England roads.

Asked whether, in treating New England as a group or territory for the purpose of making a representative showing as to net income for any constructive year, witness did not think it essential that the figures for the Boston & Albany should be included, witness replied:

"If that were done it would involve so much possible adjustment. We do not know how much the Boston & Albany and New York Central are inter-involved. If the Boston & Albany were a purely separate New England road, it might be that these conditions would show up otherwise. If it could be separated as a distinct New England road, of course your supposition would be correct."

The figure of $418,000,000 shown as the property investment of the New Haven does not include any of the trolley lines owned by the New Haven. It represents purely the railroad property of the New Haven with the inclusion of an amount of approximately $40,-
000,000, representing their interest in the New York termi-
496 nals.

Witness does not think that in dealing with a constructive year, based on the tonnage that moved for the year ending June 30, 1920, any allowance was made for reductions in expenses. It has not been their experience in recent estimates that the tendency has been downward at all. They allowed in that estimate neither for reduced expenses, nor did they make any allowance for the increased deficits which would result from a decreased volume of business. They made no allowance on either side, because these were both matters of considerable conjecture. They allowed for the 40 per cent. higher level of rates granted by the Interstate Commerce Commission, except that the two larger roads, the Boston & Maine, and the New Haven, which went into the matter in some detail, estimated the increase in freight revenue at 37 per cent. Witness thinks that is probably true of the Central New England also.

The New England roads were affected to some extent, just as the other roads, by the 33⅓ per cent. restriction on inter-territorial business; but the 37 per cent. cannot be demonstrated exactly. They have not had time to absolutely analyze the results of the increase as yet. In the case of those two roads, that same estimate was made independently by the comptrollers of the two roads, without
497 reference to each other.

In the case of the Boston & Maine the witness has tried to have that analyzed in more detail, and finds that it is principally due to three sources: First, there is the hold-down by the 33⅓ per cent. on interterritorial rates; second, the method of applying the 40 per cent. increase to the eastbound rates where there is a differential of Boston over New York, was such as not to produce fully 40

per cent. The Boston & Maine has not been able to estimate that exactly, but it amounts to several hundred thousand dollars. In other words, in publishing the eastbound tariffs the New York rate was increased 40 per cent., and then the existing differential was added to that rate. The result is that at present the New England roads are not realizing the full 40 per cent. on that business; and third, in the case of the Boston & Maine, that in the treatment of the one cent terminal which was allowed to all parts of the Boston & Maine system except for the Fitchburg division, that terminal has not been increased as the rate increases have been made; and unless that terminal is increased 40 per cent., the effect of that is that the full 40 per cent. is not realized by the Boston & Maine.

The New Haven, for example, deducted from its net because of its assumption that instead of realizing 40 per cent. it realized 37 per cent., about $1,400,000.

In the preparation of Exhibit 1, in the case of the Boston
498 & Maine, the figures would show that $8.95 was the price of coal.

Witness cannot tell on that particular item of $8.95 just what part represents the freight rate. The average freight rate for all-rail coal at the present time, per gross ton, is $3.52, to the Mechanicsville gateway. That price was the largest charge-out price, and involved coal at various prices at the mines, and probably some of it moved under the old freight rates, and some of it under the new freight rates. At the present time it is $3.52 per gross ton, or about $3.20 per net ton.

On the water coal the rail freight to tidewater at the present time is $3.09 per gross ton.

In making their estimate as to the cost of fuel, an element was added by way of adjustment on account of the inferior quality of the coal that they are now getting, in the case of the New Haven and the Central New England. In the case of the New Haven, the arbitrary adjustment made in connection with its fuel bill alone on account of inferior quality of coal was $685,000.68.

Witness does not know that in the long run New England would be more affected by the quality of coal than other parts of the country.

In recent months the situation has been such that New Eng-
499 land roads have had to take what they could get, without saying very much. Probably a road which had its mines on its own line, and could control the cars that it placed at those mines, might exercise a little more control over that situation.

The estimate that inferior coal is going to increase the cost of the New Haven fuel by almost $700,000 was furnished by the comptroller of the New Haven road, who received that estimate from his mechanical officials. Witness knows nothing about it at all. The total cost of fuel to the New Haven for the year 1920, with the last two months estimated, was $15,750,000. That does not include any estimate for poor quality. That is the actual cost as charged out by the New Haven.

The figure deducted by the Central New England on account of inferior coal was $64,910. Their total coal bill for the year 1920 was $1,749,000.

In the Central New England estimate the charge for depreciation for this adjusted year was increased to the extent of $316,000. Witness understands that a portion of the depreciation increase was due to setting up depreciation on the Poughkeepsie bridge. The New Haven and Central New England have increased their depreciation charges in the past year, the amounts actually charged out for depreciation, because they believed that they had not been
500 charging out a sufficient amount for depreciation before that.

What they have done is simply to change the rate of depreciation so that the result of the change is an increase in the annual amount to the extent of $316,000.

In the New Haven estimate there is an item of $1,430,000 included by way of adjustment to represent increased basis of expenditure since June 30. That is explained in the same way. The rate of depreciation on steam locomotives has been increased from 2 to 3½ per cent; on passenger cars, the same increase; and on freight equipment, from 2½ and 2¾ per cent to 4 per cent.

Witness does not think there was any comparison between the financial situation of the seven New England roads and the roads west of the river intended in Exhibit No. 1. It was simply intended to show, as near as could be estimated, what the actual situation is. The New Haven road is charging out this depreciation and has been for a long time at this higher rate. By a "long time," witness meant for several months. He understands they started in March, 1920.

If other roads are charging out a depreciation that is too high or too low, witness should think they might make a similar change, as long as their change is of a character that is approved by the Commission. If the New Haven has changed to a rate that in the opinion of the Commission is too high, then to that extent it would
501 not be proper; but witness understands these rates of depreciation vary from ½ of 1 per cent to 6 per cent. on various roads.

Those two items of deduction from their actual net on account of inferior coal on the New Haven and Central New England, are the only deductions made for that feature, and witness understands that that was a condition that was particularly burdensome on those roads, and they felt that their estimate for the next year would not properly reflect their conditions unless they made an allowance for it. The amount added is an estimate. No similar estimate was made and taken into account for these other roads. That was only done in the case of the New Haven and the Central New England.

Witness has no means of knowing whether the quality of the coal received by the New Haven was substantially different from that received by the Boston & Maine. In arriving at the New Haven net, shown on the exhibit, there is an item described as an inventory adjustment, amounting to $390,316. Witness supposes any road might have such an adjustment. He would not say that they would without knowing the particular conditions. Witness supposes that means there was an inventory adjustment made in the actual figures that were taken as the base of this year, and that that ad-
502 justment was made to remove that abnormal condition. Witness can see how it would be quite proper to do that.

Witness's estimates, instead of taking the express revenue that they got for the year ending June 30, 1920, assume that those express revenues for a year beginning today would be $1,800,000 less for the New Haven alone, a decrease of 36% as compared with the June 30th year. That estimate was based on statements made by the express companies. Witness thinks the roads were given to understand that their revenues were likely to be nearly cut in two under the current operation of their relations with the express companies. The only information he has as bearing that out is that the September and October express revenue of the New Haven shows more than 50 per cent decrease below the same months last year. Each month is over 50 per cent decrease, which would indicate that this deduction was possibly too conservative, or was made conservative in the hope that some way would be found of partly remedying that condition.

The Boston & Maine, apparently, deducted $1,458,000, exactly 50% of its express revenues for the June 30th year. The same statement is true—September, witness believes, was 57 pr cent below last year, and September and October together were more than 50 per cent less than the same months last year. That particular kind of adjustment would have to be made by the roads west, as to
503 their June 30th year, to get any basis for comparison with witness' Exhibit No. 1. Witness thinks they will suffer to a great extent also from the same cause.

The figures which cross-examiner is quoting from were prepared on a circular sent out by the chairman of the Trunk Line Accounting Committee, and so far as possible are based on the same procedure that witness understands the Trunk Line Committee is following to make up an estimate for the Trunk Line roads. This circular is as follows:

"December 6, 1920.

"DEAR SIR:

"Will you kindly have furnished to the undersigned, care of Bureau of Railway Economics, Washington, D. C., as promptly as possible, the information outlined below, which it is expected will be used in the application of the New England lines for an adjustment of divisions:

"Income statement for year ended October 31, 1919, adjusted to the basis of present-day revenue and expenses. This will include the effect of the award of the Labor Board, the rate increases, the express contract, material prices, and any other factors which influence the income of the carriers.

"If not thoroughly understood, please advise promptly. The hearing has been set for December 15, 1920."

Certainly in so far as these same conditions affect the trunk line roads, they should take into account the same thing.

Witness does not know whether, so far as the inferior quality of the coal is concerned, he ever saw any estimate that took into account those elements, except such estimates as were made in connection with this case. The increase in the cost of coal was included by all the roads in the questionnaire which they submitted in the rate case.

The actual figures as to the wage increase of the Central New England, estimated at $1,000,000, were not yet available for the entire year. Any figure would be somewhat of an estimate. The estimate of $1,000,000, witness is informed, has been substantiated by the retroactive time that has been paid.

Referred to the Boston & Maine figures and the New Haven figures, which estimated the effect of the labor award at 16 per cent
504 of the total operating expenses, and asked whether it is possible to get at, more nearly, the actual amount represented by this wage award, the witness said:

"I did not know that. The Boston & Maine adjustment certainly was not based upon operating expenses, so far as I know. The Boston & Maine figure was based on the actual results that have developed from current months. We originally estimated that it would amount to $10,700,000, and then, based on the actual results of the payments made during recent months, it was necessary to increase that figure to the amount shown in this exhibit, $11,005,661. I do not think it was arrived at in any arbitrary manner in any of these cases from operating expenses. I think it was estimated from the actual pay rolls."

In New England there has been a substantial decrease in tonnage in the past few weeks.

No consideration has been given to the circumstance that the railroads are, as far as possible, curtailing their wage expenditures to keep pace with the reduction in tonnage, because there has been no reduction made in the revenues. Their exprince has been that in any such falling off in business it is never possible for the expenses to follow in the reduction as rapidly as the revenues do. This
505 is based purely on a repetition of the tonnage business of that particular year. No allowance has been made for falling off in business.

Witness has wholly ignored the circumstance that wherever it is possible the railroads generally are curtailing as to the number of employees, so as to reduce their total wage payments. The conditions on which this is predicated do not allow for that. As witness explained at the start, if they allowed for that, they would also allow for other conditions.

Witness has seen a statement for the New Haven road, he believes, that the number of employes per unit of traffic, per revenue ton mile he thinks, is 180% of that for certain typical roads west of the Hudson River.

Witness would be surprised to learn that the number of employees per $100,000 of revenue for the roads west of the river was greater than for New England. He has not seen anything on that.

Witness's exhibit 7 showed that the increases due to the award of the Labor Board as pro rated arbitrarily by the Bureau of Economics amounted to $31,900,000 for 10 New England roads. That would include the Boston & Albany, the Grand Trunk, and the Canadian Pacific, and the estimates that had been made by the New England roads individually and had been supported by the amounts which had been paid for retroactive time showed that on the seven roads it amounted to over $33,000,000, so witness had assumed, either that the New England roads had under-estimated the effect, or it must have affected the New England roads more seriously. Asked whether he had any reason to think that error in the calculation of the amount necessary to take care of the increase in wages had not affected the New England roads just as it had the roads west of the Hudson, witness replied:

"No, except that a statement was presented in one of our conferences, I think by Mr. Shriver, stating that the other roads in the East failed by about $10,000,000 to meet the effect of the labor award; and that seemed to be a less amount, proportionately, than our indications in New England. It may have affected them to a similar extent,—to a considerable extent, but I do not know how much."

Witness feels that the Boston & Maine owns sufficient cars to take care of all business originating on its line. The statement that the Boston & Maine normally is about 12,000 cars short of enough to handle the traffic on the road at any given time is a little high, the witness thinks. The Boston & Maine owns 22,000 or 23,000 cars, and the number on its line varies from 28,000 to 38,000, depending on conditions.

The increase per diem which witness is using in adjusting the B. & M. figures on Exhibit 1 amounts to the per diem charge of
506 $1 per day for 365 days on about 12,000 cars, which is just about the number of cars that are on the Boston & Maine tracks normally, and not owned by it.

Witness does not know whether it is exactly 12,000 or not. During the year on which this suggestion was based, per diem was suppressed during Federal control, and this adjustment was simply added, taking the number of excess car days above ownership on the line in that year at the $1 rate. This $4,628,441 used in adjusting the per diem is practically the total per diem expense that they anticipate during the coming year.

It ought to happen, if this tendency of traffic to fall off somewhat keeps up, that the Boston & Maine will have fewer cars on its line, and will avoid some of this estimated per diem that they are charging.

At the present time they are finding that it does not work out that way under the car service rules. As an example of one of the handicaps that roads situated as they are, are under, the car service rules

have put them in a position where, with business falling off and a surplus of cars on their line that do not belong to them, they have not been able to dispose of the cars and are paying per diem for the cars which would be sufficient for a much larger business. Of course, effort will be made to correct that situation. That item will
507 be reduced, and others also. But this estimate is based on a repetition of the same business. It is their contention that if business does fall off, the net result will be even worse than that which they have shown.

During Federal control there has been quite a considerable reduction in the ownership of equipment by the Boston & Maine. Witness thinks. It has fewer freight cars today than it had four or five years ago, even taking into account those they acquired during Federal control.

Witness thinks the demurrage on these cars is under the National Demurrage rules. Witness is not familiar with any special demurrage rules such as the trunk lines have, by which 5 days' free time must be given on transshipment traffic, or any other of those exceptions to the National Demurrage Code which would tend to increase the per diem of the trunk lines. He believes there are certain exceptions on export freight.

Witness thinks the per diem is a recognized burden on the terminal road, as compared with the overhead road, and as between two terminal roads, he thinks the per diem burden would be heavier on the road with the shorter average haul.

The per diem burden was not fully reflected in the per diem debit balances because the per diem debit balances depended on the ownership, and a road which has a large ownership of cars might, operating under similar conditions to one with a smaller percentage of ownership, have just as much burden; but it would not be reflected in the per diem debit balances. That burden would be reflected in its fixed charges.

Witness believes that some of the trunk lines are normally debit roads. Any adjusted year that they prepared should reflect
508 the exact conditions on their lines. In some cases it would show debits without a doubt. As a matter of fact, at the present time the New England district is the largest per diem debit group of any group in the country. The New England district shows 120 per cent of cars on the line. The grand total of the Eastern group is 98.3 per cent of cars on line. That is based on the American Railway Association report as of December 1, 1920. That figure is based on ownership.

If a trunk line had exactly the same ownership of cars as was represented by the number of cars normally on its line, then its actual figures for this October 31st year would not have to be adjusted to reflect any per diem debit, because it would not have any excess of cars on its line over ownership.

This adjustment is simply put there to show what that year would have been if the supppression of per diem that was brought about by the Railroad Administration had not been in effect.

Referred to the inclusion among the expenses of the Maine Central of a gross receipts tax of $1,099,000, and asked upon what gross revenue that tax was computed, the witness said that it was computed on the basis of the estimated adjusted revenue,—the $23,767,000.

509 The system up there is rather complicated, based, as witness understands it, upon the gross revenue per mile of line, and it has a varying rate of so much per mile. Witness could not go into that, but that is the basis he went upon.

The deduction from revenue of $772,000 in the New Haven figures, means that the New Haven road put the Anderson scale into effect immediately, practically, or very shortly after it was published, without depressing the rates at the border to come within the provisions of the fourth section of the Interstate Commerce Act, and they were later required to make those depressions; and this year ended October 31, 1919, which is used as a base for these adjustments, included certain revenue from the Anderson scale, which is not now being realied. That, witness believes, is the same adjustment which was made at the time the adjustment of that year was submitted in Ex Parte 74.

The full application of the Anderson scale, then, as to the New Haven Railroad, would increase the revenues of that New England carrier by $772,000, this appplication being without regard to any limitation of the long and short haul clause. Witness thinks the $772,000 covered the entire year ended Oct. 31, 1919.

Looking at witness' Exhibit No. 2, opposite the New Haven, the fourth column, under the heading "Property Investment Ac-
510 count Corresponding to Date of Valuation, and covering identical property," and the first column of witness' Exhibit No. 1, witness states that they do not include the same property exactly. In Exhibit No. 2 the New Haven and the Central New England are combined. Exhibit No. 2 does not include the New York Connecting Road. Exhibit No. 2 does not include certain parts of the Central New England—41.3 miles, principally between Danbury and Hopewell. That mileage of the Central New England is included in Exhibit No. 1, under the Central New England. Those are the only items that witness knows are not included in both.

Referred to witness' Exhibit No. 3, and asked whether the fixed charges shown in the first column of this, opposite the New Haven, include all of the fixed charges payable by the New Haven on non-railroad, as well as railroad property, the witness said:

"So far as I know, these figures include the entire fixed charges paid by the New Haven System, regardless of what they represent."

Twenty-two million dollars odd of fixed charges payable by the New Haven, includes the following items: Interest on funded debt, $9,974,290.75; a number of items classed as rent for leased
511 roads, aggregating $5,848,432.25; then four items payable on separately operated property, the interest charges aggregating $1,773,751.21.

Asked whether he knows whether those four separately operated properties are railroad or street railway properties, witness replied that the New York Connecting Railroad is a railway property. The Springfield Railway property, witness supposes, is a street railway property. The New York, Westchester & Boston is an electrically operated road; but witness does not know just how that would be classed. It is not a street trolley line. The Boston Holding Company is an organization which controls the New Haven's ownership of the Boston & Maine stock.

Witness thinks that the New York, Westchester & Boston Railway is primarily an electric passenger carrier. He is not sure whether they haul a little freight or not.

Witness does not know whether the charges under the heading "Interest on unfunded debt," amounting to something over $4,000,000, are such as are commonly referred to as fixed charges, or are short term notes, loans, and so forth. He does not know any more about the details of these fixed charges than appears in the statement. Witness does not know how substantial an amount of the funded debt is in relation to trolley properties.

Witness thinks that no allowance was made in preparing Exhibit 1, or Exhibit 3, for the possibility that the New Haven might
512 secure some income from the sale of certain of its properties during the current year. Witness knows that there are various properties which the New Haven has been ordered to sell, and which has been postponed from time to time, due to the unfavorable conditions which would surround any such sale. He does not know of any possibility as to anything being done as to that during this coming year.

Witness is sure that the net operating railway income for either September or October, as to any of these roads in his Exhibit No. 4, did not include retroactive wage payments.

Those retroactive wage payments were all chargeable to the guaranty period, and witness is quite sure that none of the New England roads would include those in their September accounts.

The charge of the Boston & Maine for excess maintenance in October, 1920, exceeded the corresponding charge for October, 1919, by about $937,000.

The Boston & Maine charge to maintenance of way and structures for October, 1919, was $618,528; in October, 1920, it was $1,590,997.

Adjourned to Thursday, December 30, 1920, at ten o'clock A. M.

513 Washington, D. C.,
Thursday, December 30, 1920—10 a. m.

D. S. BRIGHAM, a witness for the complainants, resumed and testified further as follows:

Cross-examination (resumed):

The difference between the property investment figures of the Maine Central, as shown on witness' Exhibit No. 1, and those appearing on Exhibit No. 6, is that Exhibit No. 6 is for the Maine Cen-

tral Railroad only. Exhibit No. 1 is the Maine Central system, and that is made up as follows:

Maine Central Railroad and leased lines, $63,897,954.
The Portland Terminal Company, $6,807,365.
The Bridgeton & Saco River, $309,840.
Sandy River & Rangeley Lakes, $1,286,758.
A total of $72,301,917.

That is the figure which was used in Ex Parte 74. The Anderson scale was originally put in effect on the New Haven Railroad in June, 1918, and reductions were ordered by the Railroad Administration which were put in effect sometime in October, 1919, so that the higher rates were in effect something over 11 months.

Dealing with the constructive year based on June 30, 1920,
514 the deductions as to the Anderson scale would cover only the period from July 1, 1919, to October 1, 1919.

Witness has not given any supporting data to justify his Exhibit 1, or given defendants access to any of the working papers or any of the detail behind these figures by which he shows on Exhibit 1 that the net of all the New England roads is only about $9,000,000 a year. The time was short, and they devoted their entire efforts to submitting the October 31, 1919, year in as much detail as possible.

Witness has not submitted the details of Exhibit 1. He would say that the papers which he has submitted to defendants' accounting committee quite fully support those figures.

Exhibit 1 is based on adjustments which in general were similar to those which were discussed yesterady. The net result, taking all the roads together, of the year ended October 31, 1919, is not very far apart from the June 30th year, and as long as defendants' committee preferred to use that year, it semed unnecessary to duplicate the mass of detail involved in those two estimates for periods which were not so very different. There is nothing fundamentally different in the adjustments made. There is no very wide difference in the results.

Witness has not with him the figures from which he cal-
515 culated the figures shown in Exhibit 1 in as much detail as the figures which he has given defendants for the October 31st year. Each individual road has the working papers.

The witness said: "If you will permit me to explain—I am sorry that this is in the record, but we had a meeting by request of your accounting committee two weeks ago, following the hearings, and the detail of the figures on Exhibit 1 was asked for, and it was suggested by your representative that as all your roads were using this other year it would be satisfactory if we did the same; and we went ahead expecting that that would meet with the approval of your counsel. Apparently it has not. I am very sorry that we went ahead on that basis, because we had plenty of time and could just as well have prepared the details of the other year; but as long as your roads were going to use this October 31st year it seemed to all of us that it was desirable to confine it to that, and when I learned yesterday that you thought there was some objection to cross-examining on a period

which was not in my exhibit, I prepared a substitution or a supplement which indicated the totals of the figures on which I had furnished your committee with the details on December 23rd or 24th."

Witness submits a supplement to Exhibits Nos. 1 and 3, which shows the estimated net railway operating income for each
516 New England road based on the year ended October 31, 1919, adjusted to December, 1920, and the amount by which it is estimated these same roads will fail to meet their fixed charges on the basis of this same year.

The statement was received and marked "Complainants' Exhibit No. 61, Witness Brigham."

These figures were prepared upon the basis of the year which was understood between witness and the trunk line accounting committee was to be used. They had previously been requested by the trunk line accounting committee to prepare this data in considerable detail for this year. They were working on it at the time, so that it seemed much simpler.

Witness has the supporting papers for these figures with him, and they have been furnished to counsel for the trunk lines.

Witness has prepared, on the best information that he could obtain from the various roads that are complainants here, an estimate for a year ahead. This is a forecast for the year ending August 31, 1921, which is based on such actual information as is available for September, October, November, and partially for December, and on estimates of earnings and expenses for the balance of that period.
This particular forecast attempts to take into account what
517 has not been done in other estimates—the effect of a reduction in business which has already begun, and the effect of certain reductions in prices of materials and other operating costs.

The same was received and marked "Complainants' Exhibit 62, Witness Brigham."

Wtness was asked yesterday if the September and October figures included any back time, and he said he thought they did not. He has looked at his papers and finds that no request was made to make any eliminations from the actual reported figures, and it is possible that there may be back time on some of the roads. Those were intended to be the actual figures reported to the Commission, and in so far as any back time is included in those months, he thinks it appears there. So far as back time is included during September and October, it does not properly belong in those months.

It would not be safe to take Witness' Exhibit No. 4 showing the results for September and October, as at all typical of those two months, or as fairly representative of one-sixth of the current year. Witness thinks he pointed out in his direct testimony that he certainly hoped they were not representative of one-sixth of the year.
It simply seemed that they should keep the Commission in-
518 formed as to what the current results were from time to time, and those were the latest two months that they had under the new rates.

Asked whether, in constructing Exhibit No. 62, giving a forecast for the year beginning September 1, 1920, he constructed that year on the September and October figures, as shown in their accounts, the witness said:

"I cannot tell you now what eliminations, if any, were made from those accounts. The September and October figures were used as a starting point."

Asked whether he could say, as to the Boston & Maine, whether in forecasting what this year will bring forth, he took the September and October figures of this year as they stand in his books, the witness said:

"I cannot say now what eliminations were made. I am not prepared with the working sheets of that statement at the present time."

The September, 1920, maintenance of way figures of the Boston & Maine were $1,586,146; for September, 1919, they would be $884,129.

The maintenance account of the Boston & Maine for September, 1920, shows an increase of about 80 per cent. over September, 1919. The corresponding figures for October, 1920, were $1,590,997, as compared with $648,520 in October, 1919, an increase of ap-
519 proximately 145 per cent. for 1920, over 1919. This increase was substantially greater than the total maintenance charge of October, 1919. This was due primarily to two causes: The first cause was that October, 1919, was abnormally low, and the second cause was that the maintenance in 1920 was necessarily deferred, due to inability to get men and material in the earlier months of the year, when the heavy part of the maintenance is ordinarily done, which threw that over into September and October.

Witness has the record of the earlier months of the year tending to warrant the conclusion that the figures were abnormal because the work earlier in the year was deferred. Witness has not the 1918 figures with him. The witness said that the October, 1919, figures were subnormal, as compared with the previous Octobers. To support that statement he has the detail of the man-hours used on purely maintenance work, which indicates that during the test period the average number of man-hours on purely maintenance work was 1,448,000 for October; in 1919 it was 1,021,000, and in 1920, it was 1,571,000. Witness has not the corresponding figures for September. He thinks they would show a similar condition.

July, 1920, was the highest month up to that time, and the charge for that month was $1,235,000. There is no question but what the maintenance in October, 1920, was higher than it normally
520 would be in October, as represented by the man-hours.

Witness does not think there was any single abnormal expenditure. There was work done in October which normally would have been done earlier in the year. For example, in October, 1919, the charge was about $648,000. On an equated basis, taking into account the rates of wages in effect in 1920, that would have

been increased to about $800,000. It is entirely clear that the maintenance charges of the Boston & Maine for September and October, 1920, were abnormally large.

Witness does not think that if this abnormality in that one operating account of the Boston & Maine were removed, the deficit of $698,000 for September and October, 1920, would be wholly eliminated. It would make a considerable difference. He thinks possibly October was on an equated basis, perhaps $300,000 above the normal month, and September slightly less than that, probably. Taking the two together, the reduction or the elimination of this abnormality would possibly amount to $500,000. If he made that elimination as to the Boston & Maine of $500,000 abnormal expense, the result would be that for the 7 New England roads the net railway operating income for September and October, as shown in witness'
exhibit, would be almost double. When you are down pretty
521 near the line of deficits, it does not take very much to double
a figure.

Witness would like to differentiate between this statement and the constructive years that have been submitted. This constructive year does not purport to be anything but the reported figures. In the constructive years that have been submitted, attempts have been made to eliminate all back time and abnormal charges.

There may be subnormal conditions in other accounts. This is simply the actual account.

Witness has said that so far as wages are concerned, the September and October figures of the New England roads very likely include items for retroactive wages payable back to May 1st. Witness does not know whether that amounts to enough to completely offset the alleged shortage in what they need to meet fixed charges.

Asked whether he was prepared to say, in connection with his Exhibit No. 4, that if the figures for those months were examined and all abnormal or subnormal elements were eliminated—abnormal or subnormal for those months—the result would be a shortage in what they need to meet fixed charges, the witness said:

"It might vary considerably in either direction."

Witness has no details as to Exhibit 4. That was simply reported
to him by each road,—the total that they reported to the Com-
522 mission.

Asked whether any of the items in the maintenance account of the Boston & Maine, for example, during September and October, were entered on an accrued basis, as distinguished from actual expenditures during those months, the witness said:

"We had set up reserves on rails and ties, and I believe that practice was continued in September and October."

In October, 1920, they placed 132,000 ties, as compared with 68,000 in October, 1919, and in October, 1919, they laid only 260 tons of rail, as compared with 1,588 tons in October, 1920.

It is apparent that witness' Exhibit No. 3 depends for its significance on his Exhibit No. 1.

His Exhibit No. 3 determines how much the New England roads will be short of meeting fixed charges, by accepting as reliable the net railway operating income shown on his Exhibit No. 1. Witness has already supplemented his Exhibit No. 1 and his Exhibit No. 3 on the same paper.

Asked whether, in both of those constructive years, he deducted from the 40 per cent increase 3 per cent, and assumed that his revenue for whichever constructive year he used would be only 37 per cent increase, the witness said:

523 "I know that that was done in both years on the Boston & Maine. I haven't the working papers on the other roads for the June year, so I cannot say."

Witness did not prepare the estimate of 37 per cent for the Boston & Maine. That 37 per cent is estimated. It may be 38 per cent, and it may be 36 per cent; but those three factors which witness mentioned, each of them, will amount to several hundred thousand dollars, and one per cent of their freight revenue is about $400,000.

The deduction made from the Boston & Maine revenue on account of the 3 per cent deduction, is about $1,200,000, or $1,300,000.

Referred to his Exhibit No. 4, the witness states that he has agreed that the deficit which it shows of $698,000 may be reduced by the abnormal charges to maintenance, to about $200,000.

As to the shortage to meet fixed charges during September and October, if that abnormality were removed, and there were no other corrections to be made, it would be only $1,090,000. If you took off $500,000 it would be $1,092,000.

Somewhere between $250,000 and $300,000 is the estimate of the deduction of the Boston & Maine on account of the interterritorial increase of only 33 per cent, as compared with the general in-
524 crease of 40 per cent. They are having those figures checked up as rapidly as they can, to substantiate that figure; but witness was not able to get the details when he came here. It requires a great deal of work to do that, and that 37 per cent was the best judgment of the comptroller and the auditor of freight accounts. They are proceeding as rapidly as possible to analyze the accounts still further, to see just how far that is justified. It is not a figure that can be determined from the actual monthly reports. In the month of October, for example, their ton miles on the Boston & Maine did not fall off at all, and yet their revenue showed, witness thinks, only an increase of about 25 per cent. They cannot tell it from the published figures. It has to be dug out of the detailed bills, to see how it will work out.

Combining the Southern, Western and transcontinental tonnage, witness' line gets about 9 per cent of their total interchange tonnage. As to that 9 per cent of their interchange tonnage, instead of getting a 40 per cent increase, only the 33 per cent increase applies—the 33 1/3 per cent increase.

Asked if he knew of any way by which he could get the figure down to the 37 per cent, that is, any basis that justifies the deduction

of over $1,000,000 of the Boston & Maine revenue upon the
525 general assumption that instead of getting 40 per cent, they get only 37 per cent, the witness said:

"Well, it was estimated that the hold-down of the eastbound rates amounted to about $2,000,000; that is, the differential of Boston over New York for the New England roads. Of that, the Boston & Maine proportion would probably be about seven or eight hundred thousand. Now, that is divided between the Boston & Maine and the trunk lines. I do not know in just what proportions."

Witness has not the details. He will furnish the calculation on which he bases the 37 per cent figure. In so far as the revenues of the trunk lines and the C. F. A. lines that are affected by that hold-down are larger, they would, of course, suffer to a greater extent. If the New England lines suffer to the extent of that fraction, it is apparent that the trunk lines and the C. F. A. lines who participate in all that traffic, would suffer to a greater extent, as they have 4/5 of the revenue to suffer out of.

The figure used in the witness' basic year, ending October 31, 1919, as the cost of their coal, was $5.95. The figure used in this adjustment was $8.95, which was an increase of $3 over that year which was used as a basis for the rate case. It was assumed that
526 these 1½ million tons would show an increased cost of $3 a ton, based on the year ended October 31, 1919. The figure of 1½ million tons is not exact, but it is approximately that. The figure submitted in the questionnaire as the 1919 tonnage was 1,489,000. In saying a million and a half, witness is simply dividing this adjustment of 1,416,000 by $3.

Witness believes that the Boston & Maine consumed that million and a half tons of coal in the year ended October 31, 1919.

His attention being called to Prof. Cunningham's Exhibit No. 28, which shows that for the calendar year 1919 the Boston & Maine's consumption of coal was only 1,305,000 tons, the witness said:

"I think Prof. Cunningham's exhibits were all based on the Boston & Maine Railroad, while all the exhibits I had were based on the system."

The actual figures for the calendar year 1919 for the Boston & Maine system were 1,535,702 tons, which is slightly more than the October 31st year. For the June, 1920, year, the price of coal taken by the witness for the Boston & Maine was $8.52. The actual cost for the year ended June 30th was $6.283 per ton.

Witness has said the figure used in the constructive year, June, 1920, was $8.53. The actual average cost for that period was
527 $6.28, making an increase used as a basis of the adjustment of $2.24.

As to the Boston & Maine figures shown on Exhibit 1, in making the adjustment, the witness assumed that the Boston & Maine would pay $2.32 more per ton for all of its coal than it paid during the year ended June, 1920. That includes, of course, the increase in freight charges paid other lines, as well as the increase at the mine.

Prof. Cunningham's Exhibit, No. 28, shows that the Boston & Maine for the 8 months ended September 1, 1920, paid on an average $7.19 a ton for coal. It shows that the average for a part of the year was higher than the average for the whole year; that is all. Witness included in his Exhibit 1, as representing the increased cost of coal which the Boston & Maine is subject to,—the aggregate amount of $4,213,691, of which $1,617,000 represents additional freight charges; and, roughly, $2,600,000 represents the difference in what he says is the present price that the Boston & Maine has to pay, compared with the price it had to pay for the year ending June, 1920. That $2,600,000 is about $2.24 a ton.

In figuring the cost of coal per ton delivered, witness includes only the cost of transportation up to the New England junction. Referred to Mr. Eaton's suggestion of arbitraries to be deducted before prorating, and asked whether he could state how the arbitraries of 35¢, 50¢ and $1.10 were translated into arbitraries to be deducted before prorating, witness said:

"I am familiar with the method, yes. The method was to take the percentage of revenue on this through business, this interchanged business, which accrued to the New England roads, to the total revenue of that business, and then to conclude that the New England roads and the other participating roads would share in the arbitrary in proportion to the percentage which they received of the total revenue. In other words, if the New England roads, out of the total freight charges on through business, received 35 per cent of the revenue, that would mean that out of any arbitrary which was applied before prorating, the New England roads would bear 35 per cent of that arbitrary, and therefore that in order to yield, in the aggregate, any given sum to the New England roads, a fixed sum to the New England roads, it would be necessary to apply, before prorating, an arbitrary which, when reduced by 35 per cent, would yield the net amount desired."

Asked to translate the 35¢ arbitrary into the 54¢ arbitrary to be deducted before prorating, witness stated:

"I divided it by 65, which is the reciprocal per cent. If you reverse that process and take 35 per cent of 54, you will find, I think, that that is 19 cents. That means that if the 54-cent arbitrary is applied before prorating, and the New England roads receive, in the average, 35 per cent of the total revenues, they would share in that 54-cent arbitrary to the extent of 35 per cent, or 19 cents. I should say that those figures which Mr. Eaton gave were predicated on approximately 35 per cent, and that is based on the assumption that this arbitrary would be borne in proportion to their present earnings by all of the roads which participate in the business which is interchanged between the trunk lines and the New England roads. If it should be impracticable, through traffic conditions and accounting conditions to spread that arbitrary beyond the Eastern district, that figure would be somewhat modified, because the New England roads' percentage of the total revenues in the Eastern group alone is more

than 35 per cent, so that the figures which Mr. Eaton gave were predicated upon this arbitrary being shared in by all of the roads which participate in this business."

In computing the average cost of coal on the Boston & Maine, the witness took the total tonnage consumed in the period, took
528 the average price for the actual period used, and then the actual price for the most recent period, and multiplied the total tonnage by the difference between those two prices. The average price for the adjustment was the most recent price. For instance, in the October 31st adjustment, witness thinks the price used would have been the most recent month in which coal was charged out, the October or November average, at which coal was charged out in that month. Witness used the average price for a year as a basis. He arrived at that average price by simply taking the total number of tons consumed in that year and the total amount of money paid for fuel in that year. The price fluctuated very considerably from month to month, particularly in the past year.

Referred to the graded arbitraries and asked which commodities came within each of the three grades, witness said that the 35¢ arbitrary applied to anthracite coal, bituminous, iron ore, clay, sand and gravel; the 50¢ rate applied to wheat, corn, oats, other grain products, flour, other mill products, forest products, pig iron, bloom, and brick; the $1.10 rate to everything else.

Witness' Exhibit No. 6 is the report of a committee of five accountants made to the traffic officials of the Eastern district, in connection with the proceeding known as Ex Parte 74. That committee included two New England representatives, of which witness was one. The five members of the committee substantially agreed on Exhibit No. 6. There were minor differences, but in substance, they agreed. There were some things which, for the sake of agreeing on something, they did not insist on. For instance, the New Haven property investment; they objected to the elimination of that
529 $10,000,000 that has been spoken about, but they were simply trying to get a general picture, and did not insist on all details.

That dealt with three groups, New England, trunk line territory, and Central Freight Association; and under the heading "Trunk Line" it indicated that a 6 per cent. return on the property investment of the trunk lines would require an increase in the existing rates of 29.76 per cent., in order to return that group of carriers the 6 per cent. referred to. That was before the wage increase.

Witness assumes that the final increase of 40 per cent. represents in a general way, 30 per cent. due to this presentation, and 10 per cent. due to other presentations.

It would appear, based on this method of separating the trunk lines and C. F. A. lines, and assuming that on this showing the Eastern district was granted a 30 per cent. increase by the Commission, that that 30 per cent. increase, so far as the trunk line territory is concerned, represented only a quarter of one per cent. more

than the carriers in that group were entitled to on the basis of a 6 per cent. return on their property.

Witness supposes that because of the larger quantity of interterritorial freight, that the trunk lines handle through the Potomac gateway, and to other southern points, and to western territory, that they are materially affected by the lower basis of increase applying on interterritorial traffic. He does not know how much that traffic in trunk line and Southern territory is based on rates that break at the boundary. He has no information on those traffic conditions, and can only accept what the trunk line accountants say.

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Witness presumes that those various factors which, as to New England, he estimates at 3 per cent., as to the Trunk Line group, amount to more than a quarter of one per cent. The indications are that the East as a whole has not realized the 6 per cent. return.

It is one of the theories of the complainants in this case that the roads west of the Hudson, as a result of the inclusion of the New England roads in the eastern territory, have received 1.48 per cent. more than they otherwise would have received, and that the New England roads are in some way entitled to that 1.48 per cent. of the revenues the trunk lines and C. F. A. lines are collecting. The separation between trunk lines and C. F. A. lines was purely arbitrary, and not suggested by the New England representatives. The separation of New England from the rest of the territory is not purely arbitrary in the sense that witness means. It is geographical. In separating the C. F. A. and trunk lines, there were some through lines which could not be separated, apparently, and had to be thrown into one group or the other. So far as the New England roads are concerned, they are just considering the group to the west as a whole.

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So far as the 1.48 per cent. is concerned, the theory of complainants' case applies only if all of the roads west of the river together are considered as a whole.

From witness' Exhibit No. 6, under the heading "New England," it appears that so far as the New England group is concerned, prior to the wage increase, they required a freight increase of 47.4 per cent. in order to get a 6 per cent. return on their property investment. That includes the Boston & Albany. Omitting the Boston & Albany would make that percentage requirement higher. After the wage award, the witness figured that the New England needed over 59 per cent. increase, taking the seven roads, to produce the 6 per cent. return on their book value. That would be the increase needed on their total freight revenue. Approximately 40 per cent. of the New England total freight revenue is purely local New England traffic, local to individual roads, or interline within the New England group.

Asked whether, when they submitted their case to the Commission, and decided that they were not going to ask to be treated as a separate group, but were coming into the Eastern district, and instead of asking for 47.40 they were going to ask

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for 30 per cent., they had in mind that as to 40 per cent. of their traffic, which is not interchanged with any of the defendant carriers, they were voluntarily relieving the New England shippers of paying them, in freight rates, enough to produce a 6 per cent. return on their property, the witness said:

"That would involve the whole question as to whether the local or the through traffic was properly remunerative. We did not consider it in just the light you have expressed it."

They did consider their total freight revenue, and about 40 per cent. of that freight revenue is on traffic that these defendants have not any connection with.

Asked whether, whatever their expectations or intentions were, when they submitted the New England case in connection with the Eastern group, they must have been entirely clear that as to 40 per cent. of their revenue they were relieving the New England shippers from a burden which they could have asked them to assume, if they had been treated as a separate group, the witness said:

"Why, if this request for increased divisions or arbitraries, amounting to approximately $25,000,000, is found to be well founded
533 and just, and that $25,000,000 were applied on the through business to the New England roads, then, on the basis of the estimate made at that time, there would have, apparently, been no necessity for increasing any rates any more than the average for the group. It all hinges on that."

Asked whether their claim as to the 40 per cent. of their necessities is not against the New England shippers, the witness said:

"I say no. That depends entirely on whether the present rates on local business are properly remunerative and whether the present divisions of through rates do not properly reflect the operating conditions."

Recess.

D. S. BRIGHAM resumed.

Cross-examination continued:

The 3 per cent. adjustment on the basic revenue of the Central New England, Boston & Maine, and the New Haven, on account of witness' assumption that they only got a 37 per cent. increase for the year ended October 31, 1919, amounts to approximately $1,300,000 for the Boston & Maine, $180,000 for the Central New England, and $1,440,000 for the New Haven.

534 Referred to his exhibit No. 6, and asked whether there is any detail in which they have amended or revised any of the figures to a different basis from what they were when the report was submitted in Ex Parte 74, the witness said:

"The individual roads in Ex Parte 74 submitted their questionnaires, and then there were various adjustments added in bulk; so that these figures used on this statement would not agree in every case with the individual questionnaires. * * *

"The questionnaire of the Boston & Maine, as originally submitted in December, I think, 1919, showed an adjusted net income of $2,103,798 credit. The following adjustments were added before the case was finally submitted:

"For increase in mail pay, credit of $300,000.

"The effect of supplements 24 and 25 and certain other wage decisions, $600,000.

"Increase in price of coal from the time that the questionnaire was originally submitted, $1,251,019.

"Increased freight charges on coal, $769,800.

"Increased freight charges on other materials, $90,000.

"Increased cost of private car mileage, $50,000.

"Increase in the per diem rate from 60 to 90 cents, $1,175,180.

"Which made the adjusted net income as finally submitted
535 by the Boston & Maine $1,532,021 deficit."

Witness would not say that this was a change from Ex Parte 74. He would simply say that was a change from the original questionnaire submitted by the Boston & Maine.

There were a great many million dollars in adjustments added by the rate committee in bulk, and this is simply their best attempt to prorate those bulk adjustments to the Boston & Maine.

In preparing the estimate for the adjusted year based on October, 1919, the aggregate increase in wages shown by way of adjustment for the Boston & Maine alone was $11,005,661. Witness has not the working sheets upon which that figure was built up. It was based, witness believes, on the month of May, 1920, and was later confirmed by the retroactive time payrolls.

Witness would take May, 1920, in computing the wage increase as to a constructive year ending October, 1919, simply because the information was available for 1920 on account of the payrolls being paid in that year, and there was not any such information available for 1919. There was no definite estimate of just what this award of the Labor Board would be by individual roads, and they had to wait
until they had worked it out on actual payrolls to see what
536 it amounted to.

The study on the October, 1919, year was prepared within the last week or two.

Asked why then he did not have the figures for the year ending October, 1919, as to number of employees, just as available as the figures for May, 1920, the witness said:

"I think the figures on number of employes would have been available; but I mean in applying the different increases to the different classes of employes it would have been very difficult to do it on a past period. I tried to get that information for all roads for that year from the Bureau of Economics, but I found they had not made any such study."

Asked whether he knows of any warrant for using the May, 1920, wage statistics in this study which he claims is a constructive year based on the year ending October, 1919, and whether he thinks that is good accounting, the witness said:

"I think it would be better if we had available the actual results for that past year, but this was the best information I could get."

Asked why, if he has the basic facts available for the year, October, 1919, a constructive year based on June, 1920, is not the safer one to follow, that being the one covered by this exhibit No. 1,
537 the witness said:

"I think that it would be necessary in that year, just the same, to apply this labor award to a large part of the year running back into 1919. The same condition would be true to a considerable extent. That is, the year ended June 30, 1920, starts July 1, 1919."

Witness understands that his special report to the Interstate Commerce Commission for the month of July, 1920, in which he calculated, at the request of the Commission, how far their wages were going to be increased by the wage award, was based on the month of July, the actual results for the month of July.

On the Boston & Maine, for the month of July, the result for the system is $11,842,000, which is considerably bigger than the one he has used. The Boston & Maine, like other carriers, makes an annual report showing the number of employes.

It would be very important, if they could, to do it, in making up this adjusted year, to base it on the actual number of employes during the basic year that they are building on. Of course, that is an average of that period.

For the year ended June 30, 1920, the business was somewhat heavier, and the employes in train service would naturally increase. On the other hand, in the spring of this past year, they were
538 very far behind their usual quota in maintenance of way employes, and witness believes that that, to a considerable extent, would offset any excess figure in the May payroll.

Witness presumes that their special report to the Commission for the month of July showed the estimated ratio of increase which the wage award would impose on them, and showed the percentage of increase in wages that they would have to pay, based on the month of July, 1920. He has not the report with him. Witness attempted to get that for the questionnaire year, and not only for their roads, but for all roads, and he was not able to get anything but a very arbitrary prorate.

Asked whether, as an accountant, he thinks it would be a fair method, in estimating this item which he says is hard to get at, to take the aggregate wage for July, 1920, and his statement in that report indicating that the wage award involved an increase of 21.3 per cent. on the wages then in effect, thus having the percentage of increase applicable on their July, 1920, payroll; take that percentage and apply it to their October, 1919, year payroll, whatever the total

payroll was for the year October, 1919; assume that that would be increased by 21.3 per cent., which is the same as he advised the Commission their July, 1920, monthly payroll would be in-
539 creased; and whether that would be a fair approximation, the witness said:

"I think in order to do anything like that it would be necessary to find the percentage of increase for every individual class of employes, and perhaps apply that to the payroll for every individual class of employes in the October 31, 1919, year."

Witness does not think that that was not done in making up the constructive year based on October, 1919.

Asked whether he would be surprised to learn that applying the July, 1920, percentage to the October, 1919, year payroll would reduce the Boston & Maine increase because of the wage award, by over $1,700,000, this representing whatever is covered by the report which the Boston & Maine annually makes to the Commission, the witness said:

"I should not want to agree to that without having it thoroughly analyzed, because there is not only the fact that the statement which I have presented—the adjustment in that covers the entire system—but, further, it includes certain items which are covered by joint facility accounts, that do not appear in our own payrolls; and I should want to analyze that pretty carefully before agreeing that there was any such difference."

540 Referred to his Exhibit No. 7, and the first column, and asked whether the figure of $31,968,000, for the New England roads as a whole, is merely the sum of this $11,000,000 Boston & Maine item that he has been talking about, and the corresponding items for the other 9 roads, the witness said:

"No, sir; as I thought I explained when I put that in, that is purely a prorate of the estimated effect of the labor award on the basis of the 1919 compensation."

Referred to his Exhibit No. 8, and asked whether, where he there undertook to show the actual effect of the wage award on seven of the New England roads, that was not a figure that he arrived at by adding the individual wage increases of the seven roads together, the witness said:

"Well, as a practical matter, that was done by taking the three roads which were to be eliminated and adding those together on the same basis of prorate and deducting that from the total. But there is no reason why the individual roads cannot be obtained on that same basis."

Witness thinks it will be found that the adjustments used in these individual roads for the effect of the labor award will add up to approximately $33,000,000. That has no particular connection with

Exhibits Nos. 7 and 8, in which the labor award was distributed on a purely arbitrary prorate.

541 Exhibit No. 7 has three more roads in it. That general computation was based on the ratio of the total compensation for 1919 of these seven roads to the total compensation of the United States, and if that was one or two per cent, that percentage was applied to the labor award as estimated by the board.

The corresponding figure on Exhibit 8 was arrived at by witness by using the same method. He was furnished with a similar prorate for the three roads which he was taking out, and he simply subtracted that from the figure on Exhibit No. 7.

Referred to his Exhibit No. 10, and to evidence that it was inconsistent with the previous exhibit, and that there were duplications involved in these totals, the witness said:

"Necessarily; yes. I do not think I made that quite clear at that time. In adding together the total tonnage handled by any combination of roads, even taking the figures published by the Interstate Commerce Commission, there is bound to be a certain amount of duplication. It is impossible to take any group of roads and add the total tonnage together without having duplications to the extent that part of that tonnage is handled by two or more roads.

542 There is no intention of attempting to show up anything different; and, as I said at the time, that column has no particular significance, but it is the total of individual roads, and as such is the same figure that might be obtained if we took the total tonnage handled by individual roads and added them together.

"Now, in the 34,000,000 tons of interchange freight and in the 53,000,000 tons of all freight, we have attempted to eliminate those duplications, which could not be eliminated without some sort of a special study such as we have made."

Referring to the third column and the total trunk line traffic interchanged by the New Haven shown as 18,306,366, and asked whether that tonnage equally involves duplication, the witness said:

"No, sir. If you are considering the New Haven alone, it does not; no, sir."

This statement, in so far as a statment prepared as it is explained in the heading that this statement was prepared, by taking alternate months and attempting to construct a year on a general average per cent, does actually reflect the total as to the New Haven.

Considering each road by itself, that represents the tonnage of that class that is handled by that road. If some part of that tonnage is also handled by another road, and you add the

543 two roads together, you are bound to get duplication; but you could not show any different figure and still give a proper picture of the individual road.

The only figures that witness would qualify on the exhibit are in the next to the last column, where he gave the total tonnages of all

the New England lines, and there the figures he changes are as to trunk line traffic and as to interline New England traffic. As he explained in his direct testimony, he though that next to the last column might just as well have been omitted from this exhibit.

Witness referred in conference to the fact that in Exhibit No. 9 there appeared to be certain discrepancies in the distribution of tonnage between trunk lines, which were not material, except in the case of the Delaware & Hudson and the New York Central; and he would like to submit a corrected Exhibit No. 9, in which he has attempted to eliminate those discrepancies. In doing so, he states that they had the Boston & Albany included in their figures, and it being decided that the Boston & Albany figures should be eliminated, it involved a great deal more detailed work than was expected, and the discrepancies that have occurred were the result of the picking out of the Boston & Albany tonnage, which was very completely interwoven with this other New England tonnage. Witness thinks that the Delaware & Hudson tonnage is reduced about
544 400,000 tons, and the New York Central tonnage is increased between four and five hundred thousand tons. The other differences are very slight.

The statement referred to was received and marked Complainants' Exhibit No. 9-A, Witness Brigham.

Referred to his Exhibit No. 11, witness does not think it would be possible within any reasonable period and without a considerable additional force to do the work, to determine th average haul performed by the New England roads on those three classes of traffic, (intra-Trunk ine, interline New England, and local) taking these same tonnage figures.

When making this up, he did not have the average haul figures. None of these discrepancies change the total of 34,099,000.

In deducting the Boston & Albany tonnage from that total, the deductions were improperly distributed among the different other roads.

Redirect examination:

With reference to the 3 per cent deduction which resulted in witness' computing only 37 per cent increase instead of 40 on their trunk line interchange business, the first of the three items to which witness referred particularly on the Boston & Maine, was the
545 failure to realize the full 40 per cent on the eastbound rates as the result of the 40 per cent having been applied to the New York base and the existing differential added to that rate as so increased.

Witness is not a traffic expert, but the eastbound rates to Boston are based on the New York rate plus a fixed differential, which witness believes is 7 cents on first class from C. F. A. territory, and another differential from Buffalo territory. In various percentage increases which have been made from time to time that differential has always been maintained, the 40 per cent being added on to the base rate, and then the same differential being added on to that. Of course, the effect of that is that the through rate to the Boston

group does not obtain fully the 40 per cent, or whatever percentage of increase was applied. Witness understands that it was the intention of the Commission in Ex Parte 74 to retain or restore such differentials as far as possible.

On p. 253 of Ex Parte 74, the Commission stated:

"The eastern carriers express of record their willingness to preserve existing relationships between the rates to and from the eastern ports. No objection to this proposal was made. This result can be readily accomplished for the reason that all rates in Official Classification territory between the ports and points west of the Buffalo-Pittsburgh line are based on the New York-Chicago rates. The base rates may be increased and existing port differentials maintained. It is our view that in fiilng the increased rates here authorized a provision of this character should be made."

Witness understands that these port differentials have been maintained through all the increases, just as they originally were and that they have not been increased under any of the increases. Witness' third item was the one-cent terminal which the Boston & Maine receives at practically all points except Boston and points on the Fitchburg division. In any prentage increase, unless that
516 terminal is also increased by the same per cent, the net result is that the amount realized is less than the general percentage applied. It was their best judgment that the sum of those three items would net the New England carriers that loss of 3 per cent. Any qualifications that are to be made because of any unusual charges to maintenance in those months, September and October, are limited in their effect solely to Exhibit No. 4. They do not apply to any of the adjusted years that have been submitted. Witness has simply used Exhibit No. 4 to show actual results for those two months. He did not carry those actual results into any of his constructive years. If October, 1919, was abnormally low, that adjusted year would in so far fail to reflect a normal maintenance.

The amounts deducted for depreciation in the New Haven or in other accounts should not be taken to qualify the June 30, 1920, constructive year. They had no relation to that year. Those particular adjustments that were referred to specifically were in the year ended October 31, 1919, adjusted to date.

With reference to column 4 of exhibit 2 and column 1 of exhibit 1, the witness said:

"Column 4 in Exhibit No. 2 cannot be taken into consideration in comparison with column 1 of exhibit No. 1, except by a great number of adjustments both in the item of property included, mileage, and also the dates. In Exhibit No. 1, column 1 represents the property investment including materials and supplies, as of October 31, 1919, for the various systems. Column 4 of Exhibit No. 2 represents the property investment figures as compared with the actual properties included in the valuation studies of these several systems which are shown in column 3 and as compared at the same date.

The instructions were, and I think care has been used to see, that the properties which are represented by the valuation figures in column 3 and by the book figures in column 4 are the identical properties, and that the date of the property investment figures corresponds with the date of the valuation."

The purpose in exhibit 2 was to contrast column 3 with column 4 for the purpose of demonstrating that column one in exhibit 1 was conservative, if anything. The latter column is simply a bringing up to date of those book investment figures, with the inclusion of such other parts of the system as were not included in the valuation.

Referred to a deduction on account of the Anderson scale in his constructive year, 1919, the witness said:

"The year taken as a basis for this estimate was the year ended October 31, 1919. In order to estimate what any given percentage increase in freight rates would yield, it was necessary to apply that to the freight revenue for that year. In the case of the New Haven, however, just before the end of that year a condition had operated which, if effective throughout the entire year, would have made the freight revenue lower to the extent of some $770,000. It, therefore, seemed—and this was in accordance with the practice fol-
547 lowed in preparing the exhibits for Ex Parte 74—that that amount, $770,000, should be deducted from the total freight revenue for that year before applying any percentages or other estimates.

"The Anderson scale was applied on the New Haven in June, 1918, in full, and its application resulted in violations of the Fourth Section, which were ordered to be eliminated by the Railroad Administration in October, 1919. So that those rates, which were higher than can now be realized under the Anderson scale, were in effect practically throughout that entire year, and that amount of $770,000, necessarily had to be deducted before using the revenue of that year as any criterion of what might be expected from any given percentage increase in freight rates."

Those retroactive wages, if any, which might have been paid by the Boston & Maine in September and October, 1920 affect only exhibit 4. They have no connection with any other exhibits.

Recross-examination:

Witness has said the retroactive wages would affect Exhibit No. 4, October and September, 1920, results. It might equally affect Exhibit No. 62.

JOHN L. DEMPSEY, recalled as a witness by the complainants, testified further:

Direct examination continued:

60 per cent. of the business of the Central Vermont is through business, defined as that which moves purely overhead over the
548 Central Vermont Railway. That is largely confined to one portion of the road, from St. Johns, P. Q., to White River Junction, Vermont. It is received from the Grand Trunk at St. Johns to the Boston & Maine at White River Junction, or it goes in the opposite direction. 6 per cent. of the Central Vermont's business is strictly local. About 34 per cent. is interline business, which originates or terminates on witness' line, and is then transferred to some connection. The tons one mile per mile of line for the year 1919 was 559,670. The average earnings on all the freight traffic per ton per mile was 1.52 cents.

Witness produced a sheet showing the tonnage interchanged with different connections, which was received in evidence as Plaintiff's Exhibit No. 63, Witness Dempsey.

Cross-examination:

Exhibit 63 shows a total interline traffic of 171,900 tons. Witness cannot say what percentage of that tonnage moves west of New England on joint rates otherwise than via the Canadian lines. He
549 cannot say because they have treated the Grand Trunk as a trunk line in this case all the way through.

Witness estimates that the 75 per cent. of 171,900 tons moves west of New England, including that which moves via the Grand Trunk. The statement is representative of six months of 1919 and six months of 1920.

It is true that the Central Vermont sends a great deal of their traffic to C. F. A. territory via the Grand Trunk.

Witness would not say that is a very substantial part, but it is a good representative part of this 171,900 tons. There is an eastbound tonnage via the same route.

GEORGE S. HOBBS recalled and testified further:

Cross-examination continued:

A large part of the traffic handled by witness' line which is involved in this case requires an intermediate movement via another New England line before it reaches the defendants. This does not include business interchanged with the Grand Trunk through Canada. The traffic that moves from or to Bangor and to or from Buffalo might move to Buffalo via the Maine Central and the Grand Trunk, or it might move via one of the trunk lines, such as
550 the New York Central. To reach the New York Central it would be delivered to the Boston & Maine Railroad at either

Portland or Deering Junction, Maine, and would run thence to Rotterdam Junction.

In his suggestion that certain arbitraries should be deducted after prorating, witness contemplated only one arbitrary in such a case.

Asked how much would be the Maine Central's share of this arbitrary, the witness said:

"It has been suggested that our proportion of whatever is received in settlement of this claim should be divided among the complainants on the basis of the property investment account."

Asked as to whether he has any suggestion as to how these arbitraries of 35 cents, 50 cents and $1.10 should be divided on the specific traffic called to his attention, as between his line and the Boston & Maine, the witness said:

"It would be my understanding, Mr. Bikle, that that would practically be put into a pool."

Witness has no suggestion to make as to what specific share his line should receive of that particular deduction, except that the entire amount received in New England would be put into one common amount and divided on the basis of the property investment
551 account. He means, whatever accrues as the result of this deduction should be treated in that way generally.

They have figured how much money that would mean to the Maine Central. It would be somewhere around $2,000,000 a year. They have figured $1,800,000, and then they have figured, on a little different basis, a little over $2,000,000. The traffic originating or terminating on the Maine Central Railroad, to and from trunk lines, exclusive of Canadian traffic, is 1,600,000 tons. Witness would say that it all moves under joint rates. The joint rates apply from certain points—Lewiston, Brunswick, and other points of that sort, and beyond that there are these arbitraries, which the Maine Central receives on a substantial portion of the traffic. That is, a joint rate plus an arbitrary.

Referred to his suggestion as to this temporary plan, that there might possibly be a minimum for the lines west of New England if the plan worked hardships in specific instances, and asked whether he had any suggestions as to the amount of that minimum, the witness said:

"I have been thinking that over, Mr. Counsel, and there is an alternative plan which has suggested itself, which might be considered."

Asked what is that plan, the witness said:

552 "It is this: In Mr. Brigham's testimony, speaking in round figures, there are 34,000,000 tons interchanged per annum, on which the freight is $191,000,000, divided: New England, $67,000,000; West, $124,000,000.

"Now, 40 per cent. increase on the West proportion, speaking in round figures, is about $50,000,000, which would make the West proportion $175,000,000.

"The amount of our claim, as you know, is $25,000,000. In order to give us $25,000,000, based upon the interchange and the revenue derived from the interchange, we would have to be given, in addition to our present divisions, something like 15 per cent.—perhaps a little less than 15 per cent. of the West proportion, and that could be applied, if it seemed suitable, to the entire traffic interchanged. That might be a simpler way. On the other hand, it might meet with objections."

Witness means first to calculate the divisions according to the present plan, and then figure 14 or 15 per cent. of the division West and transfer that to the New England lines.

Asked what they would do with that transfer, the witness said:

"We would divide that, as I have previously stated,—put it into a pool and divide it among the complainants upon basis of the property investment account."

553 Asked whether his proposal contemplates that the amount be transferred to the New England lines which handle the traffic, the witness said:

"Not necessarily, because that would embrace in it any necessities which we may have at the present time for any restatement of New England divisions."

Witness suggests that as an alternative plan. He does not wish to withdraw his other plan. He has no suggestions in regard to any change in the previous plan. He has no suggestions as to the minimum which it would be proper to apply in a case where the arbitrary reduction might leave nothing to the lines west. He did suggest that this matter be placed in the hands of a committee, to make a study of it; and that is the only suggestion he has at this time. Witness' plan was the same as Mr. Eaton's. There was first to be an arbitrary deduction on coal, then one on low grade commodities, and then one on all other traffic.

The reason for making these three classes of arbitraries in lieu of one arbitrary on all traffic is in order to more fairly distribute the burden than the burden would be distributed on a basis of one arbitrary rate per ton. This would be fair on account of the varying rates on the various commodities. Witness means, because when the rate is very low it would leave an unfair share to the lines
554 west; and, therefore, the arbitrary deductions must be adjusted with some relation to the through rate. Perhaps it is also proper that it should be adjusted with some reference to the present division of the rate, on the ground that it would not be quite fair to give the New England lines as their divisions more than their locals. On the whole, it is not a proper division or method to give a line a higher division than its local rate; but this is a case

which must be settled on broad lines, and complainants cannot pin themselves down to a particular rate or a particular division of a particular rate.

It is not always a principle that the division ordinarily should be less than the local rate between the same points. There are cases where rates are made up to a rate-breaking point, and then a local rate takes it to its destination. Such cases are an exception. That is a case where the through rate is made on combination. It is not always customary that the division of the joint through rate is less than the local rate. It is not customary that the division should be higher than the local rate; but there are exceptions to that in the case of long blocks, where the nearby stations might get more than the locals, and the far away stations very much less than the locals.

Witness would say that all these matters are proper things to
555 be taken into consideration in the division of these rates.

Witness' line carries from points as far as from Bangor to Central Freight Association territory, at the New York rate. In other words, the lines that operate from New York receive that same rate on traffic to Chicago as all the lines that handle the traffic from Bangor to Chicago receive.

Asked what advantage the lines from New York get out of joining in the handling of traffic from Bangor, Maine, for less money than they get on the same traffic from New York, the witness said:

"It is competitive traffic, and they have always been willing to do it."

Witness would say that it is true that that adjustment of rates is primarily in the interest of New England; but, in modification of that statement the trunk lines must compete for that traffic in order to get a fair share of it, and that is why they put soliciting agents down in New England territory.

That business is largely competitive, and if the trunk lines want a fair share of that business they must give the New England lines a fair division; otherwise, it might go by the other lines. It is not

necessarily true that that adjustment is primarily in the in-
556 terests of New England, and is traffic on which the New England lines should be prepared to take a relatively low division.

To some extent, if this did not go from witness' territory, it would probably go, because of these competitive conditions that he has described, to trunk line territory. If it moved from New York the trunk lines would get the same revenue that all the lines operating from New England receive.

The Rockland division group is used in connection with traffic both to Trunk Line and Central Freight Association territory: For points on that group, the mileage received by the Maine Central is 117 miles. The distance from Portland to Rockland is 82 miles, plus a ferry across a river about half a mile wide. This ferriage is computed in mileage at 30 miles. The actual distance, using the arbitrary mileage, is substantially 110 miles. That is not the longest distance in the Rockland group. The longest distance is from

Portland to Lime Ridge, P. Q., 202 miles. Not a great deal of traffic moves in that direction.

On the Rockland branch the distance from Portland to Rockland is the longest distance. There the Maine Central receives in constructive mileage more than the actual distance, regardless of what is the movement. In building the rates to trunk line territory from points beyond the Rockland Branch, like points beyond Lewiston and their junction, Brunswick, they add the arbitraries.

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On business going beyond the Rockland division group, to and from trunk line territory, they receive their ordinary Lewiston or Brunswick divisions, plus the arbitraries that they add to take it between that group and its originating or terminating station. The rate is made in that way, and so divided. That involves the use of this 117 miles. They get a terminal deduction on that traffic. The distance to Brunswick is 29 miles, and it is 36 miles to Lewiston, and forty-some to Mechanic Falls. On traffic that goes beyond those points, to and from Trunk Line territory, they get a mileage allowance of 117 miles plus a terminal deduction for that 29 or 36 miles, and then their arbitrary beyond. The amount they receive on that traffic is a very moderate percentage of their zone B class rate for a like distance, and they think that now it is not enough to fairly compensate them for the cost of hauling the business.

Asked how they justify a terminal on traffic which does not terminate there, the witness said:

"Well, Mr. Counsel, you might say that that terminal is not for that part of the haul, but for the end of the haul, and whether it is or is not, in that way, the lines west of us get just the same on that business, whether it terminated or originated at Lewiston or Brunswick, Maine."

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They do perform a terminal, but not at the rate-breaking point. The amount that they fix for the service beyond Lewiston or Brunswick is an amount entirely within their own control, to some extent; but it ought to be very much more than those rates, in witness' judgment.

With regard to Central Freight Association territory, and taking this Ellsworth Division group, there is some traffic which moves beyond the Ellsworth Division or originates beyond the Ellsworth Division and goes to or comes from Central Freight Association territory.

On trunk line business to and from Central Freight Association territory, from and to points on the Ellsworth Division, the mileage allowance for the Maine Central is 179 miles. From Portland to Mt. Desert Ferry is 179 miles. That is the longest distance that there is on that division.

Asked why it is that they ought not to have the Rockland basis of divisions from and to points beyond Lewiston and Brunswick that are reasonably about the same distance from Portland that, say, Rockland is, the witness said:

"I think, Mr. Counsel, it is not generally realized what our costs of operation per unit are. I think our costs of operation per
559 unit are sufficient to warrant us in securing, as arbitraries, not only 179 miles, but something more than that. Mileage is not the only factor in dividing rates."

As to points beyond the Ellsworth Division on traffic to and from Central Freight Association territory, the Maine Central get their Ellsworth Division allowance out of the through rate, and they add to that a terminal deduction and their arbitrary.

A terminal deduction is justified for the same reason that they justify it on business to and from trunk line territory—the very heavy expense incidental to handling the traffic. They perform a terminal service on all that business, and their arbitraries on that business are very low, and they are not getting sufficiently recompensed at the present time for handling this traffic, including the terminal allowance as well as the arbitrary.

These arbitraries, in witness' judgment, are too low. They were made when their conditions were very different from what they are today. They are publications of witness' own road, in which other roads do not concur, but the conditions under which they are operating have materially changed since they have had very much control over these rates. These changes in conditions have come
560 about since the corporate control prior to Federal control.

Referred to his statement on page 574 of the record that "these cars were handled to 431 destination stations from these junctions," and to his statement on page 576, "The balance of our freight traffic which originates or terminates on the Maine Central Railroad is distributed at a comparatively large number of stations, about 250 in all, besides a considerable number of prepay stations and private sidings," witness stated that the stations via the different routes were duplicated; that there were 250 stations on his line, plus the flag stations and private sidings; that there were perhaps 100 non-agency stations,—that is an estimate.

Witness' plan for the division of rates contemplates all of the business which they handle to and from Trunk Line territory, whatever its destination or whatever its origin.

Witness has not formulated any plan, but it is his opinion that the lines south of the Virginia gateways should surrender some portion of their revenue on the traffic that moves to and from the South.

Witness has not formulated any plan as to what should be done with respect to the transcontinental rates, how much the lines
561 west should give up; but he thinks there should be a restatement of divisions on that traffic.

Referred to his Exhibit No. 45, and the first rate that he refers to, from Lewiston, Maine, to Scranton, via Mechanicville, the revenue to the New England carriers on first class traffic being 66.1 cents, and the lines west of the junction, 28.9 cents, witness said that the addition of the arbitrary of 5½ cents that he proposed, would give the New England lines 71.6 cents, leaving to the lines west of the junction 23.4.

Asked whether that would represent a fair adjustment of that rate, the witness said:

"I am not prepared to state whether that would make a fair adjustment of that particular rate or not. We are dealing, Mr. Bikle, with this question on the traffic as a whole. That is the only way I am prepared to testify."

As to the sixth class rate, which now provides for 31½—22.3 to the New England lines and 9.2 to the trunk lines, or lines west of the junction, under his proposal that would become 27.8 cents to the New England lines and 3.7 cents to the lines west.

Asked whether that would be a fair division to the lines west, the witness said:

562 "I would answer that the same way I did with regard to the first question. I would say that we are dealing with this traffic as a whole, and not with respect to particular divisions of particular rates; and that, therefore, I cannot make an answer which will be proper with respect to one particular division of one particular rate."

Asked whether, as a freight traffic man, in the light of all the considerations that now obtain, he thinks that division of that rate would be a fair division, the witness said: "Possibly not."

Referred to the next one on the same page, via the other route, showing a first class rate of 101.5 cents, the lines in New England receiving 72.3 as their share of that first class rate, and the lines west 29.2, and that if that arbitrary should be applied, the lines east would receive 77.8 and the lines west would receive 23.7, and asked whether he had any views as to the propriety of that, as the division of the specific rate, the witness said:

"Nothing different from what I have stated with respect to the rate via the other route."

Referred to the sixth class rate, the revenue to the New England lines, if changed by the use of the arbitrary, would become 30.5 cents, and the revenue to the lines west of the junction would be 4 cents for a haul of 205 miles, and asked whether that would

563 be fair to the lines west of the junction, the witness said:

"It might not be fair to that particular road; but, as I have previously stated, we are dealing with the entire traffic of all the roads, and divisions pertaining thereto."

Asked whether there were any instances in his exhibits in which he is prepared to say that the divisions, as now made, are improper, having regard to the specific rates there shown, the witness said:

"I should say, in answer to that, that the conditions under which the New England railroads are operated have entirely changed since these divisions have been made, and that therefore that change in

conditions should be taken into account in settling this case and in settling these divisions as a whole."

Asked to take all these things into view that he wishes to take into view, and, turning to any specific rates that he has shown here, to tell which ones he thinks are improper and to what extent, the witness said:

"I have not studied these divisions with that point in view, and I should not care to go into that."

Redirect examination:

The whole of the Maine Central Railroad was included in
564 Zone B by the Anderson scale. Zone B was given a scale of freight rates 10 per cent. higher than in the Southern portion of New England. That went into effect several years ago. That recognized in some way, either the greater needs or the greater expense of conducting this business in the witness' region, as compared with the region south of them.

The arbitraries beyond Rockland and Brunswick, to which witness has testified, are very much less than the Anderson scale for the same region. They have been in effect for a considerable number of year. Witness does not remember just how long,—perhaps for 12 or 15 years.

In getting up a scale of arbitraries they gave consideration to all the conditions that were effective at the time when they were gotten up; but those conditions have very largely changed. The conditions have also changed, witness believes, since the Commission made the Anderson scale of rates for which they are operating under Zone B, and he has the impression that today that Zone B scale is, in itself, not sufficiently compensatory to warrant its continuance. When the roads passed out of corporate control into Federal control, and during the period of Federal control, different factors came into play which have changed conditions since the roads were formerly
565 in corporate control.

It has been suggested at the conferences that the arbitraries that were suggested of 1¾, 2½ and 5½, should be translated into an arbitrary to be deducted before prorating, and if that were done along the lines suggested by Mr. Brigham, it would not present the inequalities suggested by the cross-examination. Then the one who received the larger division would contribute the larger proportion of the deduction.

Asked to explain a little bit more the suggested method which he had thought out since he was last on the stand, the witness said:

"Well, that was a suggestion made as the result of several conferences which he had, and was passed on to us by a member of our accounting department, which was that, in order to give the New England roads the amount of their claim, some 14 or 15 per cent of the west proportion should be transferred on all freight interchanged, before dividing the west proportion among the individual carriers transporting the freight; that that should be taken over by the New

England roads to in part compensate them for their peculiar disabilities which have been explained."

566 When witness referred to the claim of the New England lines,he was referring to a figure that approximates the amount necessary to merely meet their fixed charges, and he understands it does not fully meet their fixed charges, as their expenses and revenues are running today. It does not anything like permit them to pay 6 per cent on their investment. It is witness' understanding that it requires something more than $40,000,000 additional to yield the New England roads 6 per cent on their property investment account, while this claim of theirs would only yield the New England roads something like 24 or 25 million dollars.

If the trunk lines did not give the New England lines enough to live on they would not get any interchanged business at all. Unless the New England lines are kept alive so that they can do the business, the industries will not be there to furnish business for the trunk lines.

It has seemed to witness as though it probably was the intention of the Commission to have some plan worked out whereby the situation of the New England roads with respect to their needs, might be at least, in part, recognized.

The New England industries which are in competition with business that moves from New York west over the trunk lines, would, in time, have to go under if they are placed at a great disadvantage with those competing businesses. Unless the New England lines are given enough to live on, those industries cannot live. Witness would think, as a broad proposition, that it is undoubtedly for the benefit of the trunk lines as well as New England to keep New England alive and have the business. Witness thinks there is

567 no doubt that they are in partnership with it, and they are just as much interested in keeping that New England business alive, as the New England lines. They have so stated to witness.

Recross-examination:

Witness' alternative plan is that the regular division shall be applied to the $175,000,000, being the $124,000,000 earned by the lines west on the interchange traffic of 1919, plus 40 per cent, and then this 14 or 15 per cent deducted from the west proportion, as a separate item, and the balance of the west proportion divided amongst the western lines, the trunk lines and western carriers, and the New England roads be given that thing in a lump, plus their regular divisions. That would give the New England lines approximating $25,000,000. $25,000,000 is 14 or 15 per cent of $175,000,000; and that is how witness arrived at that figure of 14 or 15 per cent. It happens that the $25,000,000 would be almost exactly 50 per cent of the increase that the trunk lines are expected to receive from the 40 per cent increase.

Asked whether these several plans suggested all have the common purpose of transferring to the New England lines the $25,000,000 by

which the trunk lines are supposed to have profited by virtue of the witness' inclusion in the Eastern group, the witness said:

568 "That is the reason, in part; and the balance of the reason is to give New England what we claim is a proper amount, by which to enable us to have divisions which are fairly compensatory."

Asked whether that is where they arrived at that sum, the witness said: "Yes, sir."

Witness assumes it is correct that that sum, as figured by him, represents a percentage on the total gross revenues of the Eastern group, minus New England. He also understands that of those total gross revenues, by no means all are revenues derived from this interchange traffic.

These gross revenues are made up, first, of a great deal of local traffic. It is also made up of a great deal of traffic that originates and terminates in C. F. A. or trunk line territory, and never touches New England. The only traffic out of which the New England lines could get $25,000,000 through joint rates would be the traffic that is handled under joint rates. Whether the Illinois Central, for example, would contribute anything to this fund that they are seeking to create would depend upon the division arrangements between C. F. A. carriers and the Illinois Central Railroad. Witness means they would have to be readjusted themselves also. Without such readjustment, it would take the money out of those outlying
569 lines. Without such ultimate readjustment, it would take the $25,000,000, not from all the roads that profited, but only from the roads that handled the traffic under joint rates.

The revenue that moves the traffic under those joint rates is, as indicated a moment ago, a relatively inconsiderable part of their gross revenues, but it is just as possible for the trunk lines to make an adjustment with their western connections as it is for the New England lines to make an adjustment with their trunk lines.

Redirect examination:

The roads west, of course, put into the part on which they computed their needs, all their local traffic and their revenue from it, as well as their interchange traffic. The 6 per cent was computed on the entire property investment, in order to make up the difference between the revenue they got from all freight traffic and what they needed to make the 6 per cent. The inclusion of the New England property also helped them, as well on their local traffic as on their interchange traffic.

Congress has provided no other machinery for adjusting these inequalities than by the adjustment of divisions.

570 GEORGE CASSIDY, called as a witness by the complainants, testified:

That he is assistant general freight agent of the Rutland Railroad, and has occupied that position for about six months. Prior to that time he was general freight agent for some 21 years. He has been connected with the railroad situation in New England, with the traffic department, something like 42 years.

He has prepared an exhibit consisting of 15 sheets, with accompanying maps, showing the divisions of his railroad and the division blocks.

This paper was received in evidence and marked Complainants' Exhibit No. 64, Witness Cassidy.

Witness' line runs from Ogdensburg, N. Y., in the west, to Bellows Falls, Vermont, and Chatham, New York, in the south. A portion of the line lies in the State of New York. The line from Rouses Point, New York, to Bellows Falls and Chatham lies in New England. About three-quarters of the total line is in New England. The road is generally regarded as a New England railroad. For the purposes of this proceeding it has been grouped with the other New England railroads here complainant.

Referring to sheet 4 of witness's Exhibit No. 64, the witness said that there were no rates shown on sheet No. 4. The divisions
571 are shown, and the block mileage and groupings. This sheet refers to traffic moving via Norwood, between points on witness' line, and certain indicated points in Central Freight Association territory. Except with regard to the Cincinnati group, the exhibit shows that witness' line is divided into three blocks, designated as the Swanton, Fitchburg, and Windsor blocks, and the colors shown on this page correspond with the colors shown on the accompanying map.

The column headed "Prorating Mileage, New England and West," shows, in the case of the Swanton block, that the New England road is accorded 307 miles, and the lines west 818 miles. In other words, those first two columns show the mileage that is used in the determination of the proportions accruing east and west, rather than the actual distance hauled by the respective carriers.

The four columns indicated by the title "Actual Mileage," show the actual mileage of the New England road, which means the Rutland road, in that case, and the lines west of Norwood.

The next four columns, entitled "Excess Mileage," show the minimum and maximum excess mileages allowed New England lines, and the minimum and maximum allowed the lines west.
572 The witness means by excess mileage the extent to which the constructive mileage exceeds or is less than a mileage prorate. These figures are simply obtained by subtracting the actual mileage from the prorating mileage.

The last two columns indicate the percentages allowed the New England and the lines west.

Taking Swanton, the first illustration shown, the minimum haul of the New England carrier from Swanton to Chicago would be three

miles, and the maximum haul 92 miles. For that they receive a prorating mileage of 307 miles, giving them an excess allowance of 215 to 304 miles. The corresponding excess allowance to the lines west is, minimum 12, maximum 95. The prorating per cent shown in the last two columns is determined from the prorating mileage shown in the first two columns, with the exception that there are certain terminal deductions made as indicated in the foot notes, where the reference marks are shown.

Referred to sheet No. 5, where there are two colors, red and green, in one or two instances both designated "Burlington," and in one or two instances both designated "Springfield," and asked to explain how that difference comes about, or whether there is no difference, but that, as a matter of fact, some of the western roads call this group the Burlington group, and others call it the Springfield group,
573 the witness said:

"Well, there is a difference. I think, so far as the originating carriers in the west are concerned, their earnings would be the same, whether they went to the red line point, which is Burlington, or the green points, which are south of Burlington. I understand the Delaware & Hudson Company gets the difference."

The Delaware & Hudson Company, with respect to this exhibit, is in all cases the intermediate carrier.

Taking the first instance shown on this exhibit, Chicago to Burlington, the Rutland gets a prorating mileage of 166 miles, and the lines west get 1,072 miles. Witness' lines perform a minimum and maximum haul of 67 miles, and the lines west perform the haul varying from 881 to 964 miles. Witness' excess mileage is 99 miles, and theirs varies from 108 to 191. The percentages are indicated in the last column.

The exhibit shows that of this traffic from the C. F. A. points to these two groups, both the New England carriers and the lines west get, in some instances, an excess mileage. The prorating mileages on both the red and the green are the same. Adding the two together, the prorating mileage on the Chicago is 1,238 miles. In one case the Rutland is allowed 166 miles, and in the other,
574 272. Witness' lines get less prorating mileage to Burlington proper than they get to the points south. The reference mark and note show that these divisions apply on east bound traffic only. As a matter of fact, there are no westbound rates in. It will also be noted that the mileage shown, the prorating mileage shown, is the nearest equivalent that they could arrive at. It is substantially correct, the witness thinks.

Sheet 6 shows only a small part of witness' line because it covers only their stations to which they have arrangements in via Rotterdam Junction. In other words, there are no other parts of their line except the part indicated on the map that accompanies sheet No. 6, to which they have joint through rate arrangements with the lines west, via Rotterdam Junction. These are known as their Chatham division stations. The block is called the Boston block because witness understands Boston per cents apply; and on that witness' line & the

Boston & Maine together get the Boston mileage of 212 miles, which is equal to the Boston mileage. That is why it is designated the Boston block.

Taking the first illustration, which is Chicago, the excess mileage for the two New England roads varies from 135 to 160, whereas the excess mileage of the lines west varies from 12 to 92. The deduction of 4¢ on first class and 2¢ on sixth class at the bottom of that page is for the St. Louis bridge toll. It is the deduction made west of the Hudson River for the service performed by the carriers or by the St. Louis terminal across the bridge at St. Louis. It is deducted before prorating.

Sheet No. 7 is exactly the same as the preceding, except that the gateway is Mechanicville.

Sheet 8 shows the divisions on traffic from points on witness' line via various routes to New York City. Taking the Ogdensburg group,
575 the prorating mileage shown for the New England lines is 326 miles, and the lines west 150 miles. Witness' line has a maximum excess mileage of 99 and a minimum of minus 13. The excess mileage for the New York Central is maximum 86, minimum 14 miles. From the Burlington block to New York, via Chatham, witness' line receives an excess mileage of 92, and a minimum of minus 15; and the lines west receive a prorating mileage in excess of the actual mileage, varying from 14 to 86 miles, in excess of the actual mileage.

The deductions at the bottom of the sheet represent the terminal allowance for the delivering carrier in New York. It varies according to the location of the stations in New York City. For instance, the 60th Street station, which would be one of the northern stations, would be allowed a terminal of 2 cents a hundred. The stations farther south would vary. Barclay Street would be different. The further down into New York City you go, the higher the terminal deduction becomes. In the case of the West Shore, the terminal deduction would necessarily represent the lighterage proposition. Necessarily the traffic from New York, going by the West Shore, would be lightered or floated.

Witness does not know why the terminal allowance for the West Shore varies from 2 cents to 4.2 cents.

Referred to sheet No. 9, showing similar information with
576 regard to traffic from Syracuse, Rochester, Buffalo, and Sayre, and asked to explain what the word "arbitrary" means under the prorating mileage column, the witness said:

"We were unable to figure what mileage was used. It is an old arrangement. I should imagine that the percentage was arbitrarily fixed, without particular regard to the mileage."

In certain cases witness' line gets a flat prorating percentage of 50 per cent., and the lines west get a percentage of 50 per cent., and he has not attempted to translate that into a prorating mileage. The percentage varies, but in each instance it is a definite percentage.

Referred to sheet No. 10, and asked why he shows on that sheet

only the Ogdensburg block, the witness said that that arrangement applies from their Ogdensburg division via Rouses Point and Delaware & Hudson, and not from other points on their line, because they have no rates via that gateway.

Referred to sheet No. 11, showing the divisions on traffic from Scranton and other points in Trunk Line territory to the division blocks indicated on witness' line, and asked whether it shows that both the New England line and the lines West receive an excess mileage somewhat in excess of the prorating mileage, the
577 witness answered in the affirmative. Witness' explanation of the word "arbitrary" is exactly the same here as it was before.

Referred to sheet No. 12, and asked why the figure 100 in the prorating mileage column is the same for Newark and Philadelphia, the witness said:

"Newark and Philadelphia would naturally go into the 100 mile block."

The lines west, in that instance, are accorded, for an 8-mile haul to Newark, an arbitrary mileage allowance of 100 miles.

Referred to sheet No. 13, the witness said that that sheet indicates that they have, via Troy, rates to only one group, namely, the Clarendon group, their old Bennington division. There are two New England roads east of the gateway. That traffic is handled in connection with the Boston & Maine. The junction with the Boston & Maine is at White Creek.

Sheet 14 shows, in a general way, that both the New England lines and the lines west receive an excess mileage. In that sheet the Delaware & Hudson is a terminal carrier in some cases. In the Binghamton and Scranton groups they would be terminal carriers, and intermediate in the others. In the other cases they simply show P. R. R. or B. & O. Even in those cases the Delaware & Hudson
578 is a participating carrier.

Sheet 15 shows somewhat similar information via Chatham. It indicates that both the lines in New England and the lines west receive excess mileage varying from about nothing to about 90 some miles. That is about a standoff there.

The first few sheets of witness' Exhibit No. 64 are made up in the same general way as a corresponding exhibit, No. 43, introduced by Mr. Eaton.

Asked what points on the line were selected, and why, the witness said:

"We selected the two principal stations, Burlington and Rutland." They are in size the largest stations in population. They are the two largest cities in the State of Vermont.

Taking the first sheet, on westbound traffic from Burlington to Chicago, witness' line receives 65.5 of the Anderson scale; on sixth class, 78 per cent. He figures the per cent. west as 67.6 and 67.7, in the case of first and sixth class traffic. There is some difference in the eastbound percentages because of the difference in the method of constructing the eastbound and westbound rates.

With regard to St. Louis, witness' line receives 66.4 per cent. of the Anderson scale after deductng the bridge toll at St. Louis,
579 on first class. That is less than the percentage which the trunk lines receive of their local, for their part of the haul. The situation is reversed as to the sixth class.

The remaining illustrations on that exhibit show that the Rutland gets from 58 to 80½ per cent. of the Anderson scale on traffic to Indianapolis, Grand Rapids, and Cincinnati.

With regard to Rutland, Vermont, on traffic from those Central Association points, witness' line receives somewhat more than half of the Anderson scale. The percentages which the lines west receive generally exceed those received by the New England lines, not in every instance, but that is the general rule.

Referring to the second sheet, columns 1 and 2, they are alike, except that there is a difference in the terminal deduction. The difference between those two columns is that on certain New York traffic, the New York Central deducts 2 cents, and on other traffic it deducts 3 cents.

Between Burlington and New York, via Chatham, first class, the Rutland receives 62.2 per cent. of the Anderson scale, and the New York Central gets 77.3 of their local. On sixth class the New York Central also receives a larger percentage than the Rutland. Both lines have a substantial haul on that traffic.

580 In the case of Burlington, the ton mile earnings received by witness' line are less than the ton mile earnings received by the New York Central. As to the Chatham route, that is true both as to first and sixth class.

Via the Troy route, witness' line and the Boston & Maine combined receive 67.3 per cent. of the Anderson scale and the New York Central 77.3 of its local. In that case there is a joint haul in New England.

Referring to the last column, showing the situation via Rotterdam Junction in connection with the West Shore, and asked how the ton mile earnings compare, the witness said that in the ton mile earnings the New England carriers get a little in excess, but with regard to sixth class, it is a very slight excess, very small.

Referred to the bottom of that sheet, and asked what percentage of the Anderson scale they get via Chatham from Rutland, first class, the witness said 47.68. The percentage which the New York Central receives of its local is higher. The ton mile earnings on sixth class are very nearly alike in that instance.

Line "L" throughout that part of the exhibit shows that the Rutland is getting, in some instances, less than half of the Anderson scale, in some instances between 50 and 60 per cent. of the Anderson scale, and in no instance more than 73 and a fraction per
581 cent. of the Anderson scale.

The same exhibit, line "O," shows that the New York Central as a general rule is getting generally a substantially larger percentage of its local than the Rutland gets of the Anderson scale. It is true with regard to the last three columns, that the Rutland

and the Boston & Maine participate jointly in the New England haul.

Sheet 3-A, line "L," the first illustration, shows that the Rutland receives 38.31 per cent. of the Anderson scale and the lines west 100 per cent. of their local. In numerous instances on that sheet the Rutland receives less than half the Anderson scale.

The ¾ of a cent transfer charge shown at the bottom of the second column is the National Dock Transfer, National Dock Railway. Witness understands that that is the connection between the West Shore and the Central Railroad of New Jersey, at Jersey City.

Turning to the bottom of the page, taking the Rutland traffic, first class, witness' railroad gets 36 and a fraction per cent. of the Anderson scale to Newark. The lines west get 67 per cent. of their local. In that instance there are two western carriers participating in the haul, and two eastern carriers. In numerous instances on that page the Rutland gets scarcely more than 1/3 of the Anderson scale, and except in one instance, the lines west get 2/3 of
582 their local, or more.

Referred to sheet 3-B, witness stated that in a good many cases the Rutland receives, on the average, substantially less than ½ of the Anderson scale. The lines west receive substantially more than half their local.

The Rutland Railroad is not now earning its fixed charges. Something like 6 per cent. consists of local freight traffic. It is not possible, in witness' opinion, to obtain a substantial amount of additional revenue from their local traffic. If the railroad is to receive substantial additional revenue, it must come from some other source than their local traffic.

Witness heard Mr. Hobbs' statement of his alternative plan for the transfer of this money to New England, with a great deal of interest. He understands that under that plan the lines west of the Hudson River would accord the New England carriers a percentage of 14 or 15 per cent., as the case may be, out of the earnings of those lines, on traffic interchanged with the New England roads. It is determined that that 14 or 15 per cent. would yield New England carriers substantially $25,000,000. In other words, $25,000,000 is roughly 14 per cent. of $175,000,000.

One of the gentlemen representing one of the short lines commented upon cement as if there would be nothing left if
583 a large arbitrary was allowed by the trunk lines. There would be, in a case like this.

Mr. Hobbs' plan appeals to the witness as being one that could be put in operation the quickest and easiest.

Cross-examination:

Witness would imagine that Mr. Hobbs' alternative plan would not apply on all traffic interchanged, but only on the traffic interchanged under joint rates.

Referred to Brigham Exhibit No. 10, showing the tonnage interchanged between his line and the other railroads with which it makes

interchange, and his attention called to the fact that it shows for the period in question, the 12 months ended October 31, 1919, that 1,250,000 tons were so interchanged, and asked whether he had any idea how much tonnage was interchanged under joint rates, the witness replied: "I should say substantially all of it."

Witness' line has some eastbound rates in connection with the fast freight lines operating over the Delaware & Hudson, but no westbound rates over those lines from this territory shown in the exhibit. Practically none of the traffic moves westbound via that route. His line has very little interchange traffic moving on combinations of locals.

584 Asked what is the general character of the tonnage moving between his line and the others, the witness said:

"All classes of freight; more particularly coal."

Witness understands that Mr. Hobbs' plan contemplates that this percentage that he takes from the lines west shall be put into a pool. Witness cannot tell what would be the Rutland's percentage of that pool. He hopes it would be a substantial part. Witness is not informed what is their percentage of the claim for $25,000,000.

On witness' railroad the local rates are, in practically all instances, on the Anderson scale, except they may be held down some.

About 25 per cent. of witness' railroad lies in the State of New York. The Rutland has a mileage of something over 400 miles. The Anderson scale was not authorized for that part of witness' railroad which lies in northern New York. It was not authorized west of Rouses Point, to Ogdensburg, New York, but from Rouses Point, in the other direction, it was authorized. Witness thinks that in his Exhibits they may have used the Anderson scale for parts of their road where it has not been authorized. Witness thinks the Anderson scale as a general proposition is too low. In some cases it is lower than their local rate on the lower classes. Witness has not any idea of how much of the traffic originating or terminating on

585 his road goes to or from New York City. It is a fair proportion.

Witness has filed these various sheets under Exhibit 64 for the purpose of disclosing a picture of the rate division situation as between his road and the others. He has not expressed any opinion as to the propriety or impropriety of those specific divisions.

Redirect examination:

Witness' line has more grades in northern New York than in Vermont. The grades are more extensive, and the winter is somewhat colder. The operating traffic conditions in northern New York are not more favorable than in northern Vermont. Witness would not regard the Anderson scale as unreasonably high for northern New York.

GEORGE M. WOOD, a witness for the complainant, was recalled and testified:

Cross-examination continued:

Witness did not regard it as his province to make any suggestions as to any definite changes in the existing divisions. He did not express any opinion as to their propriety or impropriety.

Recess until 7 o'clock p. m.

586 Washington, D. C.,
Friday, December 30, 1920—7 p. m.

BENJAMIN CAMPBELL, called as a witness by the complainants, testified:

Direct examination:

That he is vice-president in charge of traffic of the New Haven Road, and has been with the New Haven Road about 14 years. His previous railroad experience was, beginning in 1887, general freight agent, traffic manager, assistant traffic director of the Union Pacific and Southern Pacific Lines, vice-president in charge of traffic, and during 15 months of Federal control, Chairman of the Eastern Freight Traffic Committee; during the development of the case under Ex Parte 74, Chairman of the Corporate Traffic Committee for Official Classification Territory.

He was with the Great Northern for two and a half years, as vice-president in charge of traffic. The freight end of the New Haven's business is under witness' jurisdiction.

With the exception of the divisions with the Canadian Pacific and the Grand Trunk, all of the other divisions of the New Haven
587 were established prior to witness' connection with the company. He does not know how ancient they are.

Asked to give the history, in his own way, of what has taken place with reference to the inclusion of the New England roads in the Eastern rate group, and the attempts that have been made to obtain, without application to the Commission, an enlargement of the New England divisions, the witness read a statement as follows:

In developing the recent rate case, decided in Ex Parte 74, the New England territory by mutual consent was included in the balance of Official Classification territory as a single group for rate making purposes. The New England carriers, although realizing that their requirements would necessitate a relatively greater percentage increase of the freight revenues than in the rest of the Official Classification territory, were actuated in so including New England to avoid a higher rate level in that region than in the rest of the territory because of the injurious effect it was believed a higher level would have upon New England industry. The inclusion of New England was acceptable to the rest of the representation for eastern territory in the belief that any other plan might result in three
588 groups, it being generally known that the requirements varied,

New England needing the greatest degree of increase, Trunk Line the next, and C. F. A. territory the least. While there was at no time a definite agreement that the excess accruing to the lines in Official Classification territory west of the Hudson River by reason of the inclusion of New England would be transferred to the New England roads, its inclusion was mutual and without consent, and the New England roads had faith in the belief that they would be treated fairly.

According to statements prepared by the committee of accountants, the inclusion of New England in the one group resulted in an increase in the freight revenues of carriers in Official Classification territory west of the Hudson River under the 30 per cent. formula to the extent of 1.48 per cent. more than would have accrued had New England not been included. Such excess was estimated to be approximately $24,500,000 and was distributed in part as follows:

Carriers in Trunk Line territory	$16,275,982
and in C. F. A. territory	8,187,875

Negotiations for the transfer of the equivalent of this amount to the New England roads were opened by the New England carriers with the roads west of the Hudson River in the early part of
589 May, 1920, and a number of conferences between the executives on both sides were subsequently had.

It is claimed by the New England roads that by reason of their inclusion in the eastern group the other carriers in that group have profited under the 30 per cent. portion of the increase to the extent of substantially $24,500,000, and it is the transfer of at least this sum, based upon the volume of business upon which it is predicated, to the New England roads that is now sought. The method of transfer thus far suggested is by the allowance of certain arbitraries to the New England lines in addition to their present proportion of existing rates. This method was proposed largely as an expedient, believing it to be the most prompt by which the transfer could be made and done in time to meet the New England roads' pressing financial needs.

The door was not closed by the New England roads against a modification of these arbitraries, or increasing their number to make a more equitable distribution over the tonnage as a whole, if, in negotiation with the trunk lines, it should be found that any or either of them would place an undue burden upon any particular line of traffic, although any alteration made therein in one
590 direction would need to be offset by suitable readjustment in another in order that losses in one locality could be offset in another.

The practice of deducting arbitraries before prorating a joint rate prevails to a considerable extent throughout the country, and has long ben recognized as a method in partially determining the share of one or more carriers of a joint rate. If it should be concluded that the suggested plan of allowing arbitraries to the New England roads is objectionable as a plan, the same or any result can be

reached by increasing the existing divisions by graded percentage amounts.

It would not be a difficult task to increase the present divisions accruing to the New England roads by the graded percentage process, applying to each division group in New England a sufficient additional percentage to transfer to those roads whatever sum may be awarded by the Commission in this case, and so far as the principal New England roads are concerned this could be done without involving a future redistribution of any excess amount accruing to one or more of these roads.

As to the adequacy of divisions, and having reference to those now prevailing between the New Haven and its western connections:

591 In a sense the division of a rate is nothing more than a rate itself. It is the rate which the carrier receives for performing its share of the joint service as distinguished from the total rate charged to the shipper. Where compelling forces do not enter there is no definite rule or measure for determining a division of a rate any more than there is for determining a rate for the transportation of property. Divisions are arrived at through negotiations or trade between the carriers interested, and their adequacy should be determined by the amount of revenue which they yield. In the case of the New Haven it has been testified that the average rate per ton per mile derived from traffic interchanged at the Hudson River gateways amounts to 1½ cents. The average cost per ton per mile for handling all revenue freight calculated for the months of September and October, 1920, was 1.886 and 1.888 cents per ton mile respectively, or substantially 22 and 23 per cent. more than was earned on that interchanged. It therefore seems but logical to conclude that the present divisions produce inadequate revenue to compensate the New Haven for the share of service which it performs.

In the course of negotiations between the trunk and New England lines the question was raised as to the extent to which the New England roads could help themselves by making increases in

592 what was popularly believed to exist in the matter of numerous low commodity rates.

While it is true that a number of commodity rates exist in New England, those which move the larger volume of merchandise traffic are held at their present level because of corresponding commodity rates in Trunk Line territory.

Commodity rates on textiles from New England to New York are influenced by similar rates on textiles from points in the Mohawk Valley to New York, which are, in the main, on a lower basis than the New England rates.

Copper and brass articles, which move in large volume from the Naugatuck Valley to New York, an average distance of 90 miles, are held down by commodity rates on similar articles from Rome, N. Y., a distance of 249 miles, the rates from Rome for the 150 miles greater distance being actually less.

Carpets and rugs are manufactured in large volume in New England and Amsterdam, N. Y.

Comparisons of rates show as follows:

Amsterdam, N. Y., to New York City.... 177 miles 42 cents.
Worcester, Mass. " " " " .... 178 " 51 "
Thompsonville, Conn., to New York City 129 " 40½ cents.

593 Wool in the grease used in the manufacture of carpets and rugs:

New York City to Amsterdam, N. Y..... 177 miles 21 to 25 cents.
" " " " Thompsonville, Conn.. 129 miles 34½ cents.
" " " " Worcester, Mass..... 178 " 38½ "

Rope and cordage:

Plymouth, Mass., to New York City..... 237 miles 26½ cents.
Auburn, N. Y. " " " " ..... 318 " 26½ "

Hemp and sisal:

New York City to Auburn, N. Y..... 318 miles 21 cents.
" " " " Plymouth, Mass..... 237 " 21 "

These are typically representative of the situation.

To increase these rates in New England without a corresponding advance in Trunk Line would create such a disparity of relationship as to work hardship upon New England industry in seeking the common markets. At the same time many of the rates referred to can, no doubt, be advanced without injury to the commercial welfare of New England upon condition that corresponding adjustments are made in Trunk Line territory.

A number of these rates were reviewed on November 30th last by a joint committee of Trunk Line and New England roads' traffic officials, and a willingness has been expressed by the trunk lines to cooperate in readjusting them. An estimate has ben made by the New England roads of the amount of revenue that can be
594 derived from increases in these rates, which has been placed at approximately $3,000,000 per annum.

There is a further source from which considerable evenue can be obtained, but to accomplish which will require a great length of time. This refers to a realignment of the interterritorial rates between Trunk Line and New England and involves an almost complete new structure in Tunk Line territory in particular. Work is now in progress to improve this situation.

In the course of negotiations in the matter under consideration the statement has been made that the Pocahontas lines profited under the rate increase of Ex Parte 74 to the extent of $19,000,000 above their requirements; that because of the nonexistence of a considerable interchange of traffic between the Pocahontas and New England lines it is impracticable for the latter to transfer their share of the excess to the New England roads. Also, that there is no practicable method by which the proportion coming from the C. F. A. lines could reach New England because they and the C. F. A. lines are not direct connections.

While it is not advocated by the complainants that it be done, and realizing the difficult problem which it presents, the Commission may, by reason of the difficulties which the trunk lines present
595 in the solution of this problem, find it necessary to reopen Ex Parte 74 and make a separate group of C. F. A. territory, reducing the excess accruing therein by a readjustment of the rates authorized by Ex Parte 74. This would leave Trunk Line and New England jointly as one group and make possible such adjustment of rates as to yield to the two groups combined into one the requisite revenue contemplated by the Transportation Act. A rearrangement of eastern territory upon this basis would not create a rate situation differing greatly from that which has for many years existed and is in vogue at the present time, i. e., C. F. A. territory having a lower rate level than either Trunk Line or New England.

In a commercial sense the most keen competition of New England industry is with that in Trunk Line, and so long as the two regions are kept upon a substantially equal rate level no commercial interest would be appreciably injured.

It is a safe assumption that the traffic of eastern territory as a whole should produce sufficient revenue if suitably apportioned to sustain the carriers therein on a basis of solvency under prevailing commercial conditions and provide a fair return upon their value when business conditions become normal.

I think that is all the statement I have.

596 Referred to commodity rates of which he had given examples, the witness said that New York is a common market for these commodities, and the New England manufacturers are in competition with those in New York.

Referred to his statement that certain rates could not be increased without a corresponding advance in the trunk line, without creating such disparity in the relationship as to work hardship upon New England industry in seeking the common markets, and at the same time many of the rates referred to could be advanced without injury to the commercial welfare of New England upon condition that corresponding adjustments are made in trunk line territory, the witness said that his railway had been ready to make those advances if the trunk lines would also advance theirs. It has been actively discussed during the past year. At one time (in June 1920) their traffic committees agreed upon it, and their report is the report that has been referred to as being tabled by the vote of the executives. So it could not be carried through.

Referred to his statement that considerable revenue could be obtained from a realignment of the interterritorial rate between trunk line and New England, and that this would involve an almost new structure in trunk line territory in particular, and that work is now in progress to improve the situation, the witness said that he
597 referred to the general rate structure; class and commodity rates within trunk line territory, and between trunk line and New England. It would involve a consideration of practically the entire structure of rates which has been under discussion here. To obtain any revenue out of it it would be necessary to put the changes

on the public docket, on the various committees that handle such matters, and then they must pass before the State and Interstate Commerce Commissions.

When the Anderson scale was authorized the New Haven road put it in effect on June 25, 1918, at the time that the rates prescribed by General Order No. 28 were established. It was put in effect to its full extent. The first four classes exceeded the rate to Newark by a small amount. The fifth and sixth class rates were substantially reduced. In October, 1919, witness thinks, by order of the Federal Administration, a readjustment of those rates was made to remove the fourth section violations, or the long-and-short-haul violation. That, it was estimated, reduced the revenues of the New Haven to the extent of $500,000 per annum.

That revenue could have been realized if the trunk line structure had permitted. The trunk lines have already expressed their willingness to cooperate in such readjustment of their rate structure as will permit a reinstatement in full of the Anderson scale. Witness
598 cannot say that they have not shown their willingness to do so until after this petition was brought. He does not recall that the matter was especially agitated with the trunk lines prior to this conference that occurred in the early part of the year, or in June. It was definitely agreed about the 30th of November that there should be effort made to make that adjustment effective.

Predicated upon 1919 volume, and assuming the full effect of the 40 per cent. increase, witness estimates that the revenue to be derived from the full effect of the Anderson scale will be about $700,000 a year.

It is difficult to state what a subnormal rate is. The rates that have been commonly referred to as subnormal are largely, if not wholly, included in the memorandum which was reviewed by the traffic committee on November 30th, and in connection with which it was agreed that both sides of the river would cooperate in their readjustment. They relate partially to such rates as witness illustrated a few minutes ago. It is the position of the New England roads that it would be impossible for them to raise those rates in their territory if they did not raise them to the same extent from competing points. The New England roads are ready to do so as rapidly as possible, if the
599 others will join, and the work is in progress and will be pushed to completion as speedily as it is possible to do it.

The New Haven can obtain some additional revenue from its passenger rates. The so-called trip ticket rates in the vicinity of Boston and other parts of Massachusetts and Rhode Island can, if the Commission will permit, be advanced so as to yield somewhere around half a million dollars a year, they roughly estimate.

A law in Massachusetts existing for some time requires the railroad to sell tickets of that kind. The tickets that witness refers to were established by legislative enactment within the so-called 15-mile zone or metropolitan district of Boston. These are the 12-trip tickets within 15 miles of the city.

Originally the rate was based upon a 25-trip ticket at that time in effect, and the basis of the rate was one cent a mile. Under the in-

crease subsequently made the rate is now 1.6 cents a mile, and measures are in operation now to ask for permission to make the rate 3 cents. That authority is being sought from the Public Service Commission of Massachusetts. If permission is obtained, witness anticipates probably $500,000 a year added revenue from it.

From all these different sources, outside of the divisions, witness anticipates, roughly estimated, around $2,000,000 a year for
600 the New Haven. That is about all he can see in those items. He does not know what amount of revenue would be derived from the reconstruction of the inter-ritorial rates. No estimate has ever been made. There will be some additional revenue—how much has not been estimated—when the Anderson scale is projected, by reason of the advance in the class rates of the trunk lines west of the Hudson River to the extent necessary to permit of the extension of the Anderson scale.

Referred to the differential on eastbound business interchanged with the trunk lines, and to the fact that the arbitraries attached to those eastbound rates have not been altered under any of the recent raises approved, and asked whether those, to any considerable extent, affect or benefit the New Haven, the witness said:

"In no special way that I can think of. They represent part of the through rate, and the total through rate is divided. It has been suggested that the increase of 40 per cent. might be added to those differentials, and I think it has been roughly estimated that if that were done, and the New England roads allowed to keep the excess, which would be about on a basis of 3 cents first class, it would produce somewhere around $1,000,000 a year."

Those are differentials above the New York rate that apply
601 to New England from C. F. A. territory, and a less differential from Trunk Line—western Trunk Line. They apply uniformly throughout the New Haven system. If they were raised by an increase of 40 per cent., witness' presumption is that his road would benefit by them to the same extent as the roads north, probably a little more. He will have to change that answer. He believes that the bulk of the business from C. F. A. territory travels via the northern routes into New England.

Asked whether he could give some illustrations of the practice of deducting arbitraries before prorating, the witness said:

"I had a list prepared somewhere, but I haven't it with me. They at one time obtained—and so far as I know it is still in vogue—an arbitrary of 5 cents per 100 pounds was deducted by the Union Pacific for the crossing of the Missouri River; a similar arbitrary by the Southern Pacific for the Port Costa-Benicia transfer; the Oregon Railroad & Navigation deducted an arbitrary for the Willamette River crossing; the Northern Pacific, an arbitrary for the Bismarck bridge; the Pennsylvania deducts 3 cents for the Union Railroad in Philadelphia and Baltimore; and there are some others. I do not remember them."

The examples given date some years back. Those witness
602 mentioned were established to represent what might be called extraordinary facilities, like the bridge across the Missouri River at Omaha, the ferry service of the Southern Pacific at Port Costa, the bridge across the Willamette River, and one across the Missouri River at Bismarck. That is where the line that charged the arbitrary had been subjected either to an unusual cost or some unusual capital expenditure.

Asked to refresh his recollection by a statement handed him, the witness said:

"This statement indicates arbitraries ranging from 6.8 cents per 100 pounds on first class to 2.1 cents per 100 pounds on sixth class, applicable at Buffalo, Rochester and Pittsburgh Railway Silver Lake Branch stations; accrues to the Buffalo, Rochester & Pittsburgh Railway.

"1½ cents per 100 pounds on all classes, Central Railroad of New Jersey stations taking Scranton percentages; accrues to the Central Railroad of New Jersey.

"3 cents per 100 pounds on all classes, applicable at Central Railroad of New Jersey stations taking New York percentages; accruing to the Central Railroad of New Jersey.

"5 to 2 cents, first to sixth class, applicable at Easton, Pa., accruing to the Central Railroad of New Jersey.

603 "3 to 2 cents on the six classes, applicable at C. I. & L. stations, accruing to the Cincinnati, Indianapolis & Louisville Railway.

"1 cent per 100 pounds on all classes, Bessemer, Pa., accruing to the Bessemer & Lake Erie Railroad.

"1½ cents on all classes, applicable at C. & L. Railroad stations, accruing to the Cornwall & Lebanon Railroad.

"1½ cents per 100 pounds on all classes, applicable at C. V. Railroad stations, accruing to the Cumberland Valley Railroad.

"11 cents first class to 4 cents sixth class, on the six classes respectively, applicable at D. & H. Chateaugay Branch stations, accruing to the Delaware & Hudson Company.

"7.6 first class to 5.4 sixth class on D. L. & W. Bangor & Portland Division stations, accruing to the Delaware, Lackawanna & Western Railroad.

"3 cents per 100 pounds on all classes, applicable at D. L. & W. Montrose Branch stations, accruing to the Delaware, Lackawanna & Western.

"7 cents first class to 2½ cents sixth, applicable at Erie Railroad, Toby Branch stations, accruing to the Erie Railroad.

"2 cents per 100 pounds on stone, Illinois Central Railroad,
604 Bloomington Branch stations, accruing to the Illinois Central Railroad.

"3 cents per 100 pounds on all classes, via Blue Ridge Despatch, applicable at L. & H. Railway stations, accruing to the Lehigh & Hudson River Railway.

"Less than carloads 6 cents, carloads 4 cents per 100 pounds, Le-

high Valley Railroad, eastern and northern branch stations, accruing to the Lehigh Valley Railroad.

"7 cents first class, 3½ cents sixth, Lehigh Valley Railroad, Montrose Branch stations, accruing to the Lehigh Valley Railroad.

1½ cents per 100 pounds on all classes, Lehigh Valley Railroad, State Line & Sullivan Railroad stations, accruing to the Lehigh Valley Railroad.

"3 cents per 100 pounds on all classes, via Star Union Line, applicable at Nepperkan, N. Y., accruing to the New York Central Railroad.

"3 cents per 100 pounds on all classes, Baltimore, Md., account of Union Railroad, accruing to the Pennsylvania Railroad.

"1½ cents per 100 pounds on all classes, Pennsylvania Railroad stations, accruing to the Pennsylvania Railroad.

"3 cents per 100 pounds on all classes, Pennsylvania Railroad stations, accruing to the Pennsylvania.

605 "12½ cents first class, 10 cents sixth class, Pennsylvania Railroad, Philadelphia & Beach Haven Railroad Branch stations, accruing to the Pennsylvania Railroad.

"1½ cents per 10 pounds on all classes, Philadelphia & Reading Railway stations, accruing to the Philadelphia & Reading Railway.

"3 cents per 100 pounds, the same.

"1 cent per 100 pounds on all classes, R. F. & P. Railroad stations, accruing to the Richmond, Fredericksburg & Potomac Railroad.

"1 cent per 100 pounds, all classes, Rutland Railroad stations, accruing to the Rutland Railroad.

"1½ cents per 100 pounds, all classes, Southern Railway stations, accruing to the Southern Railway.

"1 cent per 100 pounds on all classes, Washington Southern Railway stations, accruing to the Washington Southern Railway.

"That is all."

Witness has called attention to the fact that the New Haven's revenue from interchange business is only 1½ cents, while New England and interline local yield about 4 & 6 cents, respectively, and that their revenue from Trunk Line interchange freight was below the actual cost of the transaction of their general freight business. In view of that showing witness thinks the New Haven divisions on the interchange business are inadequate for the needs of the New Haven. He thinks it is manifest from the showing that he stated a little while ago that the divisions are inadequate. The revenue that could be obtained from other sources, and all the revenue that could be obtained from other sources, it is witness' understanding will

606 be by no means sufficient to meet the needs that they have, and pay fixed charges.

Asked whether, if there is a volume of traffic on his road which constitutes from 60% to 80% of the ton miles, and which has been returning less than cost, it is in his opinion fair that his road's divisions on that should be large enough to be adequate, witness replied that either the divisions should be large enough to be adequate, or the rates should be high enough to produce the requisite revenue.

Asked to state what reflection he has given to the subject of the method by which divisions might be made adequate to meet the needs of the New England railroads, or the New Haven Railroad in particular, and which method he would suggest to the Commission to follow, the witness said:

"My thought on the subject, as read in the statement, is that after the amount to be attained is known the present divisions accruing to the New England roads could be increased by graded percentages. That is to say, on the greatest percentage accruing on any rate group for New England roads to the New Haven road the increase would be less than on a lower percentage, and so on down the line, starting in with the highest and grading up the added percentage as the proportions accruing east of the Hudson River reduce."

Asked to illustrate that, the witness said:

"Take a division where the New Haven would receive 80 per cent., increase that 5 per cent.; where its division would be 70 per cent., increase the New Haven's proportion 6 or 7 per cent. These are purely theoretical figures. Where the New Haven's proportion is 50 per cent. of the rate, increase it 10 or 12½; where it is 25 per cent. of the rate, increase it 20 or 25 per cent. It could not be determined to what extent each group percentage should be increased until a statement was made of the tonnage and revenue accruing to the New Haven road from each rate group."

607

Witness would leave the rate groups as they are, meaning all rates, whether they are classes or specifics; classes or commodities or specifics. It is simply a question of figuring to work it out and determine the amount of money to be required, and then apply the graduated percentage increase. It is like the principle which Mr. Hobbs advanced, only instead of being a horizontal percentage it will be a graded percentage.

Witness has not had time to study Mr. Eaton's suggestion of a road-to-road per cent sufficiently to pass judgment on it.

Witness would prefer, as being more equitable, the graded percentage principle, to the deduction of arbitraries of 1¾, 2½ and 5½ cents per 100 pounds on different classes of traffic, these to be translated into an arbitrary to be deducted before prorating. On his first study of the problem, the suggestion of an arbitrary seemed to him as the most natural way to meet the situation. At the time it was considered, they were under very heavy pressure, and were given to understand that money must be had quickly. The New England roads were thrown upon their own resources in developing some plan, and they hit upon that as seeming to be the most practicable.

608

Arbitraries of 35 cents a ton on low grade commodities, 50 cents per ton on grain and grain products, pig iron, bloom and brick, and $1.10 on all other commodities, were roughly thrown together, and in a comparatively short space of time, here in this building, on a day when the New England representatives were in conference on

this general subject. They took the commodity statement of the New Haven Railroad showing the commodities that were transported with the trunk lines, and they took 34,000,000 tons as the basis. This was a statement for a period of 3 months; so they set aside certain assumed low grade commodities like coal, and so forth, and set aside an intermediate grade, and then applied these figures so as to arrive at $24,000,000. They said that so much per ton on these commodities, on so much tonnage, would produce that amount of money, and so on, and it totaled up $24,000,000. In a sense they were weighted arbitraries.

If the rate on sisal and hemp New York to Plymouth, and the rate on rope and cordage from Plymouth to New York had been increased 59.2 per cent, and the rate on sisal and hemp from
609 New York to Auburn had been increased 30 per cent, and the rate on rope and cordage from Auburn to New York had been increased 30 per cent, it would have made the rate between New York and Plymouth higher than between New York and Auburn, as they were formerly maintained, and had been for many years, at an equality, and the industry at Plymouth would have suffered a handicap in competition with the industry at Auburn. The same result would have obtained in reference to the transportation of copper and brass from the Naugatuck Valley in competition with the transportation of copper and brass from Rome, N. Y.

As a further illustration, witness referred to a letter which he had just received from Great Barrington, Mass., a point on the New Haven road about 100 miles north of New York, written by the Great Barrington Manufacturing Co. on December 22nd, and addressed to General Freight Agent of the New Haven road. This letter stated in part as follows:

"Pursuant to our telephone conversation of even date, we are writing in reference to the freight rate on sheets and pillow cases from Great Barrington to New York City.

On less-than-carload shipments from this station to New York City we pay 63 cents per hundredweight on these commodities.

We are advised that the rate from Utica to New York City on the same articles is only 38 cents per hundredweight.

We are in direct competition with Utica on sheets and pillow cases, and are at the present time bidding against them on a large contract for the Government, and you can readily understand that we will be working under a heavy handicap if they have a freight rate 25 cents per hundred-weight lower than ours.

Could you not give us a freight rate on this commodity the same as Utica?

We trust you will give this matter your immediate attention."

The cordage industry at Plymouth is a very important one. It is the Plymouth Cordage Company. Its volume of business is very heavy. Witness does not know what its volume is, but it is one of the large industries of the country.

The American Brass Company, with its branch houses at Ansonia

and Torrington, all in the Naugatuck Valley, is the largest institution in the United States of that kind, witness believes. The carpet and rug industry at Worcester and Thompsonville are of large capacity. There is also a similar industry at Clinton, Massachusetts, on witness' road.

When witness spoke about subnormal rates, he had in
610 mind also exceptions to the classification. He regards an exception to the classification as a commodity rate in another form. Witness thinks exceptions to the classification are not more prevalent in New England than in Trunk Line territory.

Witness' general revision of rates between Trunk Line and New England territory had in contemplation the revision of these exceptions to the classification as well as class rates and commodity rates. That revision also had in contemplation the elimination, as far as possible and practicable, without serious injury to industry, of all commodity rates and exceptions to the classification. Witness does not readily think of any commodity rates in New England that are made in competition with water transportation. For example, the rate by water between New York and Boston is equal to the rate by rail. They have been carried at an equality for a number of years. The same is true as between Boston and Philadelphia; and witness cannot think, as he says, of any commodity rates that are carried on the railroad that are in competition with water.

Cross-examination:

Witness said that the New Haven was receiving less on its interchange tonnage than it was costing it to perform it, to the
611 extent of 22 to 23 per cent, based upon the cost figures for September and October, 1920.

The earnings are substantially a cent and a half per ton per mile, and the costs one and almost eighty-nine hundredths. The cost that the witness gave there was the average cost per ton per mile of all freight. It was on that statement that what he said was predicated.

J. E. SLATER, a witness called by the complainants, was recalled and testified:

Cross-examination:

Witness referred, in round figures, to 54,000 cars received from connections at Maybrook or Campbell Hall and Jersey City in one month; 36,000 through the Jersey City-Harlem River gateway, and, in round figures, 18,000 through the Maybrook-Campbell Hall gateway.

He testified that as to those received through the Harlem River, that between Harlem River and Bridgeport, 1,831 cars, or 5.1 per cent, were delivered or diverted from the main line, and at Bridgeport, 7,500 more, or 20.8 per cent, were either diverted from the main line or terminated at that point.

The only information witness has showing how many of those

cars were delivered at points on the main line between Har-
612 lem River and Bridgeport, inclusive, is the detail of that 1,831 cars. Those were delivered on the main line between Harlem River and Bridgeport, on the branch line to New Canaan, and on the branch to Woodlawn, which is a branch so far as freight is concerned, and on the Danbury branch between South Norwalk and Danbury and beyond.

As to the 7,500 cars at Bridgeport, and the others, witness can give pretty full detail. He has them in groups. For example, if there is a small branch line, there will be so many on that branch line between certain stations. Of the 7,500 cars at Bridgeport, 2,211 went to Bridgeport City; 174 cars to local points between Westport on the main line and Woodmont on the main line. Westport is a few miles east of South Norwalk, between South Norwalk and Bridgeport. Woodmont is 5 miles west of New Haven.

37 cars to points between Trumbull and Hawleyville. That is on the main line running directly north from Bridgeport. Hawleyville is the connection of the line from Bridgeport and Derby Junction and the line coming from Maybrook and Campbell Hall east to New Haven.

There were 642 cars that went to local points on the Central New England, via Danbury.

Witness cannot give the detail of those 642 cars. They would
613 probably go to local points on the Central New England east of Hopewell Junction.

There were 418 cars between Hawleyville and Danbury. That is on the line from Maybrook to Danbury.

96 cars from Hawleyville to Litchfield. That is a branch line running north from Hawleyville to the town of Litchfield. These cars were all destined to points north of Hawleyville, on that branch line.

11 cars from Hawleyville to Allerton Farms. That is a small town on the line from Maybrook to Waterbury.

240 from Hawleyville to Canaan. Canaan is on the line going to Pittsfield.

455 cars from Canaan to Pittsfield—points between Canaan and Pittsfield.

1,142 cars to points between Derby and Union City. That includes the cars going to points in the Naugatuck Valley south of Waterbury.

651 cars between Waterville and Winsted; Waterville being just north of Waterbury on the line to Winsted.

1,423 cars to Waterbury proper.

Of the 7,688 cars which witness stated diverged from the main line within a distance of 81 miles from Maybrook, 2,684 cars diverged at points between Campbell Hall and Maybrook and Hawleyville. Hawleyville is the point 81 miles from Maybrook, to which the wit-
ness refers. Those cars went to local Central New England
614 points and diverged at points west of Hawleyville, such as Danbury. Most of them, however, went to local Central New England points and points on the branch to Pittsfield. They go all

the way to Pittsfield. Some of them might go from Campbell Hall to Pittsfield via the Central New England line running northeast from Poughkeepsie. Witness is not prepared to say just how many would go the two ways. That is a very, very light traffic line, and a line that is not built for heavy traffic. On the other hand, the line to Danbury is a line of heavy traffic.

Witness will ascertain whether cars do in fact move from Campbell Hall to points as far north as Pittsfield via Danbury. Witness said that 10,642 cars left the main line at New Haven or before. That includes the previous 7,688.

There were 5,004 cars diverged from the main line between Maybrook and New Haven at Hawleyville, and of those 9 cars go out from Allerton Farms to Sandy Hook, 28 cars on the branch from Hawleyville to Bridgeport, 38 cars on the branch from Hawleyville to Litchfield, 878 cars to Waterbury proper, 251 cars between Waterbury and Winsted, 642 cars on the line from Terryville to New Britain. Terryville is just east of Waterbury, on the line from Waterbury to Hartford, not very far from Plainville.

615 7 cars from East Berlin to Westfield. That is on a line running east of the line from New Haven to Springfield.

771 cars between Plainville and Shelburne Falls.

760 cars to Northampton and to the Boston & Maine Railroad.

625 cars to Hartford proper.

808 cars between Hartford and Pomfret. That is on the line running east from Hartford toward Boston. Most of them would go to the manufacturing cities in the vicinity of Hartford. For example, on that line the manufacturing city of Manchester is a very important town. Very likely a considerable portion of those went there. Then there are, of course, other small local points. Willimantic is on that line, and is a manufacturing town to some extent. Witness simply said Pomfret because that is the end of that district, not because it has any particular significance as a manufacturing center. The same thing would apply to all these descriptions that witness gives of the territory to which these cars went. They are the boundaries of the territory. For example, when he said they went to Hartford proper, on a great many of them you will find the cars scattered out through a number of towns along the line, each one of which may have one, two or three manufacturing industries.

616 There were 204 cars between East Hartford and Springfield. That is on what is called the Springfield branch. You notice a loop there between Hartford and Springfield.

75 between Rockville and Ellington. That is also a small branch outside of Hartford.

392 between Hartford and Springfield, and 16 between Wethersfield and Cromwell. That is on the line running from Hartford to Saybrook Junction.

There were 390 cars that diverged at Derby Junction.

374 cars between Derby Junction and Union City; 14 to Shelton; and 2 to Tyler City and Orange.

Diverging from Devon: 551 cars to Bridgeport proper; 733 cars to local points on the main line west of Bridgeport; and 55 cars between Devon and New Haven.

Witness left out the cars diverging at New Haven. There were 1,225 of those; 665 for New Haven, 58 for local points between New Haven and Saybrook, 354 between New Haven and Meriden, 110 between New Haven and Willimantic, and 38 betwen New Haven and Plainville.

As to how many of the cars came through Campbell Hall and Maybrook and which went further east, got as far Middleboro, Massachusetts, witness has not the cars for Middleboro proper. There were not enough of them to take particular note of that. You cannot get onto Cape Cod by rail without going to Middleboro.

617 Asked how many of those cars went on down on Cape Cod, south of Middleboro, the witness said that the only figure he could give is the 390 between points north of Middleboro and Cape Cod. He is not able to give the number that go all the way to Cape Cod. That does not include Plymouth. Those are on this line between Westdale and Provincetown. Plymouth is nearer the coast, and not on that line at all. Plymouth is included in the group from East Taunton to Plymouth, 44 cars, and Kingston to North Plymouth, 9 cars. That is on the cars received at Harlem River. From Maybrook, East Taunton to Plymouth, 18 cars; Kingston to North Plymouth, 31 cars. There is a car works at Sagamore, on Buzzard's Bay. Witness is not able to say whether there is any other manufacturing establishment on Cape Cod.

From Buzzard's Bay to Provincetown is about 70 or 80 miles. The slow trains referred to by witness in his testimony are trains that they try to have carry the full capacity. They do a great deal of picking up and setting out. They have to. But they are essentially a tonnage train. That is what they are designed for.

The trains that the witness has called local trains comprise 216 out of 369 trains. That might include two trains; a turn-around run, for example. A great many run on both the trackage

618 on or west of the line between Springfield and New Haven, and on the trackage east of that line.

There is a difference in the mileage of three miles on the Central of New England as between Campbell Hall and Maybrook: Campbell Hall is an interchange point with one or two connections at that point, and Maybrook for the others. There is a joint yard at Maybrook through which the engine interchange is made with all the lines, so far as the engines of those roads bringing the cars into Maybrook is concerned. The physical interchange with some of them is at Campbell Hall. They come onto the Central New England rails at Campbell Hall, and haul the cars into Maybrook, which is 2 or 3 miles beyond. The transfer of the custody of the cars occurs at Maybrook, so far as the New England engines taking them to Campbell Hall is concerned. The interchange with the Erie, according to Mr. Wood's exhibits, is a Campbell Hall. As a matter of fact, the Erie hauls them to the joint yard at Maybrook,

under a certain contract, and takes them away from Maybrook. Witness recalls that the contract provides a certain compensation for the difference in mileage. If the cross-examiner is suggesting that they actually get the cars at Maybrook and the Erie does the work from Campbell Hall to Maybrook, witness' recollection is that the contract provides for certain compensation to cover that.

619 In an operating sense the physical interchange is at Maybrook.

Asked to describe how they handle this traffic which witness has been describing, which goes through Danbury and Hawleyville and thence some of it northerly through Waterbury, and some southerly down to New Haven, the witness said that taking the large points first, there will be through trains from Maybrook to Waterbury and Maybrook to New Haven. That is through service; 121 miles in the first case and 122 miles in the second.

Allerton Farms and Sandy Hook are on the line between Danbury and Waterbury, one of them just outside of Danbury, and the other just outside of Waterbury.

On the cars that diverge at points between Allerton Farms and Sandy Hook, those cars would be handled from Maybrook to Danbury, and then handled east of Danbury on a local freight.

To points between Hawleyville and Bridgeport they would be handled to Hawleyville from Maybrook and handled on a way freight from Hawleyville south.

To points between Hawleyville and Litchfield they would be handled from Maybrook to Danbury, and then local freight from Danbury to Litchfield.

Between Waterbury and Winsted they would be handled

620 from Maybrook to Waterbury and local freight north.

To points between Terryville and New Britain they would be handled to Waterbury and then local freight.

Cars going to points between East Berlin and Westfield would be handled to Waterbury, thence to Hartford, and thence local freight.

The Westfield referred to is Westfield, Connecticut, not Westfield, Massachusetts.

On the line north of Plainville, from Maybrook to Waterbury, Waterbury to Plainville; thence local freight.

Going to Northampton they would be handled from Maybrook straight through to Northampton, or from Maybrook to Waterbury, and thence to Northampton.

They run through trains to points where the amount of traffic justifies through trains; sometimes to Danbury, sometimes to Hawleyville, Waterbury or New Haven. It simply depends on the amount of traffic that is available, and whether it justifies a through train to the particular point from which the locals start.

The real through train service from terminal to terminal would constitute an engine run from Maybrook to Waterbury and Maybrook to New Haven. They would run occasionally, a job from Maybrook to Danbury, or sometimes cars at Danbury or Hawley-

ville would be dropped off a through train coming from May-
621 brook to Waterbury or Maybrook to New Haven.

On the Harlem River line there is a rather peculiar situation, on account of the electric operation. If the cars are handled by electric train, of course, as far as they would go would be New Haven. They endeavor to make a round trip from Harlem River to New Haven and return. There are, however, through trains which run from Harlem River to Midway, which is just east of New London. They run crews straight through from Harlem River to Hartford, Harlem River to Waterbury, and Harlem River to Springfield. They would run a train a day from Maybrook to Boston. From Maybrook to Midway and Maybrook to Providence, probably one a day each way. To Hartford there would be a different crew, but the classification would be straight. They would occasionally run straight through from Northampton. And other points from Harlem River are to points on the line from South Norwalk to Pittsfield.

These 54,000 cars were traced for the month of May, 1915. Witness considers that that month was a typical or illustrative month of present conditions, as to the distribution of traffic. He can say that with absolute assurance, because, in order to make sure that any question of that kind could be adequately answered, they had a test made in a very recent period, and the distribution
622 was almost identical.

For example, the number of cars that went through to Boston, on this paper here, showed something like 12.8 per cent., and the witness thinks under the test they took it was 12.9 per cent.; and from Maybrook to Boston it was 6.3 per cent, as compared with 6.4 per cent.

The witness has the details of this more recent test, but it was taken on a much shorter period—that is, a period of 5 or 6 days—and for that reason they felt that as long as that checked out, the month, in the distribution of the cars, that the month would be a more representative basis, on account of the fact that in five or six days to certain branch line points there might not be any cars.

It would practically work out that those 54,000 cars included only loaded cars, because the eastbound traffic does not have very many empties.

The month in 1915 which witness analyzed was a particularly heavy month, and that was the reason it was taken, because that would cover practically every portion of the railroad. It was a particularly heavy month, especially as to the business out of Harlem River.

An average month, under present conditions, would be less than that, probably, less than that out of Harlem River, and prob-
623 ably pretty near the same figure for the two of them, because the business runs heavier out of Maybrook and perhaps not as heavy out of Harlem River.

Referred to the operating statistics in Prof. Cunningham's testimony, and asked whether, in view of those figures, he thinks that

his conclusions as to operating conditions on the New Haven apply to the Central New England Railroad, the witness said:

"By no means to the same extent; no, sir."

The witness testified on direct examination that on the basis of increased cost the operating conditions on the New Haven justified it in asking for larger divisions.

Asked whether that would apply to the Central New England, he said:

"I said it would not apply in the same degree to the Central New England."

Asked whether it would apply at all as between the Central New England and the trunk lines, the witness said: "I don't think I care to change my answer."

Witness would not say that a number of the large recent improvements on the New Haven Railroad have been designed largely for the purpose of eliminating switching and terminal movements. The reason for those improvements has been more to increase the capacity of the New Haven Railroad than to eliminate
624 yards. It is true that with the Providence and Cedar Hill yards in full operation, they may be able to take off part of the load on some of the yards like Bridgeport and Hartford. But those yards are not going to be discontinued. Witness does not know of a single yard on the New Haven that is going to be discontinued on account of these improvements. Both of these yards are classification yards. To a large extent the very large area of those yards was made necessary because they are classification yards. They were built primarily for the purpose of concentrating classification.

Asked whether they ought to have a substantial effect in reducing the operating expenses, the witness said: "No, sir." The witness said that they would relieve certain yards. Furthermore, the Cedar Hill yard has been in operation for about a year, and the results of the last few months are beginning to reflect the improvement sought. The Cedar Hill yard is still being worked on, but they are getting the benefit of it, and the yard is being worked now. It was put in operation, a portion of it, in 1918, and as witness recalls, it has been running continuously for a little over a year.

Asked whether it is not a fact that the full benefit of the New York Connecting Railroad could not be obtained in the year 1919 because of the incomplete condition of the Cedar Hill yard,
625 the witness said:

"The reason why we did not get the full benefit of the New York Connecting Railroad in 1919 was due, rather, to conditions elsewhere than New Haven. It was due to difficulties at Bay Ridge, itself, and due to difficulties at Harlem River."

They got the full benefit of the New York Connecting Railroad in 1919 for about three months, and then had to stop it on account of the fact that the thing did not work out. They did not get much benefit from the New York Connecting Railroad. Witness did not say they got, when the Cedar Hill yard was completed, the full benefit of it throughout 1919. The Providence yard is much less near completion than the Cedar Hill yard. They have been working some of the new Providence yard during the last few months, but it is not yet fully in operation. The New York Connecting Railroad cost approximately $26,000,000,—somewhere in that vicinity.

Asked whether there were any other large improvements or substantial improvements on the New Haven, the benefit of which was not obtained in 1919, the witness said:

"I do not think of any big projects comparable with Cedar Hill or Providence."

625 Witness does not know whether the New York Connecting Railroad will save enough in operation to pay interest on its cost. Witness thinks that in the ability to handle more business, the Cedar Hill yard will save enough in the cost of operation to pay interest on its cost. Witness hopes that the Providence yard will save enough in operation to pay interest on its costs.

Asked concerning the difference between the average haul in 1918 and in 1919 on the New Haven road, the witness said:

"I think there were three factors in that particular year" (1919) as compared with 1918: The question of the additional haul via the New York Connecting Railway, which was figured at an arbitrary figure of something like 10 miles before. Now, of course, the actual figure is about 20 miles.

The second factor, witness thinks, is in the character of the tonnage in 1919, that is, the amount of all rail coal that came in, and other commodities, that would formerly go by water and will possibly do so hereafter, on which they had a haul from Harlem River to Maybrook, rather than from the port.

627 The other is the change in the method of computing the ton miles. The Railroad Administration changed the method of computing the ton miles from the way bills to that of the conductors' wheel reports. On the New Haven the way bills were figured on the most direct route, and the conductors' wheel reports, of course, the way the traffic actually moved. That report was made sometime during 1918. Witness does not remember just when. The difference due to the mileage on the New York Connecting Railway is permanent, and in accordance with the fact. Any difference which may be due to an increase in the proportion of the amount of all rail coal as compared with water borne coal will disappear when water freight rates go down. That is what witness meant when he said "temporary."

Witness has no idea how much the New Haven will save on water borne railroad fuel coal. He does not know how much of its fuel coal was water borne in normal times. Witness does not know why the New York, New Haven & Hartford corporate officers complained

to the director general in 1919 about the diversion of traffic from its rails.

Witness does not know of any diversion or short hauling of traffic on the New Haven in 1918 or 1919, whereby either the tonnage or the length of haul of the New Haven was affected. He was in France during that time, so that he cannot answer that question.

628 Asked whether he could give any information as to the number, tonnage and extent of runs of trains operated by the New Haven to and from its Sound steamer lines docks, either for Bridgeport, New Haven, New London, Providence, Fall River, New Bedford, or Boston, the witness said:

"I haven't the information right here. Offhand, I can say that practically the only trains run direct and for the particular purpose of handling the boat line freight are at Fall River, as the New Haven simply goes into Cedar Hill yard, and then to the docks from there."

New Bedford is the same. There is one train from Boston to Fall River, made up in Boston. That is not very heavy.

There are trains running from Boston to Fall River, and Boston to New Bedford. Those trains, however, carry rail as well as boat line freight. They are not primarily and specifically for goods or freight going to the steamers.

The freight train which runs to Provincetown carries freight for practically all points, Buzzards Bay to Provincetown. It might handle some freight to some points north of Buzzards Bay. It might handle some freight from Boston to Middleboro. It is run primarily to give prompt service between Provincetown and Boston.

Witness does not know of any traffic between points south of Buzzards Bay and Trunk Line and C. F. A. territory. He is

629 not in a position to say, one way or the other.

A statement showing 48 principal tonnage points on the New Haven was received in evidence and marked Complainants' Exhibit 65, Witness Slater.

Among these 48 points there are several, including South Providence, Harbor Junction, Providence, Pawtucket, Darlington, Phillipsdale and East Providence, which are in the immediate vicinity of Providence. They are within switching distance of the main yard at Providence, handled by road switchers, probably.

The Gulf Refining Company and the Texas Oil Company and the Standard Oil Company all have receiving plants, where ships unload oil and oil products into tank cars in South Providence and East Providence. It sounds reasonable to say that Providence is the largest shipping point of oil in cars, in New England. Witness is not able to state positively one way or the other.

Witness has no idea what proportion of the tonnage in these local trains to which he is referring, running in the vicinity of Providence, is made up of oil and oil products that is brought to Providence by boat.

He has no idea what proportion of the tonnage of these local trains running in the vicinity of Providence is made up of coal that is brought to Providence or East Providence by boat.

630 He has not any information as to what proportion of the tonnage of these local trains running in the vicinity of Providence is made up of merchandise which is brought to Providence by the steamers of the Merchants' & Miners' line from the South, or imported in foreign steamers.

Asked whether he has any reason to suppose that 60 or 70 per cent. of the tonnage of these local trains out of Providence is made up of traffic interchanged with the Trunk Lines and C. F. A. lines, witness replied that he would not be able to say. He knows that there is a substantial traffic from trunk and C. F. A. lines to these points diverging out of Providence.

There is naturally no branch road of the New Haven system where witness can testify, to a certainty, that 60, 70 or 80 per cent. of the tonnage handled on that branch is traffic interchanged with the trunk lines or C. F. A. lines.

The points listed in Exhibit 65 are not necessarily points which receive and deliver the largest amount of tonnage interchanged with the trunk and C. F. A. lines. It is based upon the total tonnage received and forwarded from stations on the New Haven.

Witness knows that efforts are constantly being made to eliminate the service, both passenger and freight, which is not strictly
631 necessary for the accommodation of the public; that applications are being made to the various State commissions for rearrangement of passenger service which will permit the taking off of local trains, and that the local trains on the various branch lines are practically reduced to a minimum. At times of very light traffic they only run three times a week. Last summer they had the heaviest passenger traffic in the history of the railroad. These trains are not put on until the amount of traffic justifies it. In some cases they were put on to relieve overloaded trains. One train was put on from Boston to Fitchburg. That train was run out of Boston 30 minutes after another train going to New York, and it was thought it would relieve that train to a considerable extent. The facts of the case were that not only was the Fitchburg train loaded to capacity most of the time, but the other traffic ran just as heavy as before. They were not able to take off a car.

There was an additional train put on the Shore Line between New Haven and New London, for one reason, because the trolley line went out of business in 1919.

BENJAMIN CAMPBELL, a witness called by complainants, was recalled and testified further:

Cross-examination:

632 Witness said that the average rate per ton per mile on the interchange traffic was a cent and a half. He took that from the testimony previously introduced. He said the average cost per ton per mile during the two months which he specifically referred to was 1.886 cents for one month and 1.888 cents for the other month. The first was the average cost per ton per mile on the in-

terchange freight and the second was the average cost per ton per mile of all freight, all revenue freight.

Witness has no information as to the average length of haul of the interchange freight. On the purely local freight, he thinks the average haul is 60 miles. As to the inter-New England or interchange with the trunk lines, witness has not those figures in his mind.

When witness referred to the sum of $3,000,000 as possible to be derived by eliminating subnormal rates, he referred to the estimate made for all of the New England roads on the advance of certain commodity rates which were the subject of review by the Committee on November 30th. The estimate regarding the Anderson scale, which was included in the $3,000,000 estimate, was estimated at a million dollars for all the New England lines and about $700,000 for the New Haven. The estimated increase of $500,000 in passenger fares was not altogether restricted to that special form
633 of commutation ticket. The estimate was about $500,000 from passenger traffic, which includes the low rate trip tickets in the vicinity of Boston, other points in Massachusetts and Rhode Island, an advance in the zone fares between Providence and Fall River, an advance in similar fares on the Harlem River branch, and between Hartford and Bristol, Connecticut. Half a million was the total sum witness thought could be realized from passenger traffic. That was for the New Haven only.

The letter of April 10th, introduced as Choate Exhibit No. 1, was written as a result of a request made by Chairman Clark at the time of the informal conference, to those who were present, to write him covering the points that were discussed at the conference. It was written by witness without the concurrence of the other members of the Committee, but a copy of it was sent to each of them. One member suggested that it be qualified because of the reference it made to the excess which the New England lines claimed belonged to them as a result of their inclusion.

Adjourned to Friday, December 31, 1920, at 10 o'clock A. M.

634

Washington, D. C.,
Friday, December 31, 1920—10 a. m.

E. J. PEARSON, heretofore called as a witness by the complainants, was recalled and testified further:

Redirect examination:

The New Haven System serves by rail almost exclusively Southern New England, with a dense population, and an intensive industrial development. Many roads connect at its gateways. The New Haven performs for them the beginning or end of the joint service. Being a terminal road, the New Haven does not solicit or endeavor to control the routing of traffic. Instead, it serves shippers and connections impartially as to the route over which freight will

be moved. Every shipper is free to route as he pleases. Every other transportation line is free to solicit from any of the exclusive stations (and most of them do), and to use the New Haven as its own terminal for the purpose.

The relations of the divisions through the various gateways appear to have been developed in pursuance of this principle, which has been in effect for many years. During these years the New Haven has felt that it was not only fair to its connections, but in par-
635 ticular that it was fair to its patrons, to conform to the principle. Otherwise, the New Haven would have been seeking to route freight to its own advantage. This it has not done.

The course of the New Haven in this regard has also been satisfactory in general to the various connecting lines; at all events, there have been no general contentions to the contrary. It follows that if this principle is to be maintained the relation of the divisions to each other should not be disturbed, and increases requested should apply via all gateways. If this position is accepted by the Commission, the problem is immediately simplified. It becomes general, not one of a mass of details.

Asked whether as a concrete example witness meant that the New Haven has encouraged other lines to solicit business in their territory and route it over the New Haven or over their own roads as they want it, witness replied:

"That is their privilege."

Asked whether the New Haven had interfered with their solicitation, witness replied, "Not at all."

Asked whether if the New York Central and others solicit traffic via gateways which connect with them that is entirely satisfactory to the New Haven, witness replied:

"That is their privilege and it is the privilege of the shipper to act in the same manner."

With reference to the business which comes to the New Haven from the New York Central, the New Haven gets the short haul and does all the terminal work. Witness introduces Exhibit 66 showing per diem rates. When the most recent divisions were established, respectively 14 and 17 years ago, the per diem rate per car mile was low. From July, 1902, when per diem was established, the original rate of 20 cents continued until July, 1906. The rate was then 25 cents until July, 1907; 50 cents until March, 1908, and again 25 cents until January, 1910. Subsequently it has climbed by fairly uniform rates of successive increases, for varying periods of time, up to the present rate of $1.00. When the divisions mentioned
636 were made, the rate was very low, and not so far from mileage.

The New Haven protested the per diem basis at its inception, and at every opportunity since, as being unfair to and discriminating against such a terminal road. This is not a new, but an old question,

with our connections. Failure to get relief in the past is partly the cause of our presence here.

The transportation capacity of the New Haven Railroad is sufficient as to volume, except temporarily in unusual weather conditions, such as may affect any road, or in an abnormal wave of inbound traffic that may be incidental to some special or general commercial activity and buying, to handle the normal requirements of business. The road is not in a position to immediately handle such excess waves as have occurred, any more than is a grain-carrying road to transport the annual crop, as it comes from the thresher.

The present capacity of the road is not publicly realized. It has so long been the fashion to decry the operation that the greatly increased efficiency and economy have been overlooked.

Traffic during the year 1919 aggregating 3,948,700,000 ton miles, which was at maximum volume, was transported without any general embargoes through the year, except for one short instance on account of labor troubles incident to the shopmen's strike.

637 There were unusual, abnormal and prolonged conditions of adversity during 1920. Embargoes became necessary in February, continuing more or less until September 13th.

These abnormal conditions were: First, bad storms, with unusual ice conditions, during February and March; second, the resulting accumulation of cars; third, strikes which included New York Harbor marine service; fourth, the further accumulation of cars resulting; fifth, the concerted action by shippers in then attempting within a limited time, as the conditions of transportation commenced to improve, to crowd the movement of such traffic as was still delayed. That caused an unusual wave and a large one. It was worked off in September.

Notwithstanding weather, strikes and embargoes, it will be surprising to note that the record shows more cars actually placed at destination and available for consignees during this year, on the average daily basis, than during the two preceding years; the figure being:

	Cars at destination on bulk and private tracks.	All cars at destination.
9 mos. 1918	6,981	10,129
9 mos. 1919	5,674	8,703
9 mos. 1920	7,239	10,657

638 The foregoing figures represent an average daily performance.

From the experience early in 1916 an important lesson was learned. Since then there has been an intensive effort to use embargoes and permits so as to prevent the loading of cars at origin in excess of the capacity of the New Haven to handle; to keep its connections free from congestion by New Haven traffic; to control and route traffic so that the maximum would be handled, and to protect consignees fairly and according to their necessities.

With as free use of permits as the rapidly changing situations enabled, the actual restriction of the embargo was very much less than its name implies. Through the use of the system, the maximum traffic that could be handled was directed over the routes and through the gateways that were open, and more cars were actually at destination available for consignees this year than during either of the two preceding years. Except for the abnormal situations stated, there would now be a clear record of two years.

As an illustration of the necessity for using embargoes and permits, while it is true that for a short period this year we were obliged to close on the receipt of anthracite, shortly thereafter we were able to permit an amount equal to the daily average of the preceding years, which we could handle and did handle. The embargo restriction, plus permit limit, was necessary because the New England market was after anthracite; because the roads west were having labor troubles at localities in other directions from the anthracite fields, and because if there had been no restrictions they could, with their increased output, have blocked the New Haven and so rendered unavailable its normal capacity.

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It is interesting to note that, when the restrictions were removed entirely, the quantity of anthracite forwarded to the New Haven thereafter did not materially increase. With the improvement this year of some interior yards and engine terminals, the New Haven will have still larger capacity. It therefore appears that, if freight for New England is forwarded with a fair degree of regularity, the capacity of the New Haven is ample.

In speaking of capacity, there are some features, that might be termed "trimmings," which are not quite satisfactory, but they affect more the quality of the service than the quantity and volume.

There are four underlying causes. It takes some additional capital expenditure to overcome them; small, comparatively. The benefit in operating costs will not be great, but undoubtedly more than enough to carry the charges. We, therefore, hope that we can get a credit back, so that we can go ahead with some additional improvements, in order that the character of the service may be improved, and, perhaps, there may be a slight operating advantage.

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Those causes are: First, long blocks. The block system is applied to every mile of the New Haven. Part of it is manual. The manual blocks are longer than the automatics. There are some stretches where we want to put in automatics, shorten the blocks and move passenger trains, particularly, more rapidly and eliminate some of the delays that are occasioned at times by long blocks. It is not within the power of the officers to overcome them and observe the block rules, which it is highly necessary as a safety measure that they do.

The next are a few stretches of running tracks. Illustrating, we have several double track lines converging at Braintree. Between there and the end of the four-track system going into Boston, at Atlantic, there is a two-track road, and frequently the morning suburbans coming in are so thick that some of them are delayed on that

double-track stretch. In order to avoid those delays, a third track is desirable. A year ago we felt that we were in balance on engine capacity. We had over 100 engines, most of them new, out of the shop in white lead. And along came the shopmen's strike, weather, and particularly the loss in time of labor due to the substitu-
641 tion of the 8-hour day in place of the 9-hour day; and we found that we could not quite cover it. So we put in some additional facilities. They are practically completed this year, or completed in large amount; but there is still some work that should be done in order that engine maintenance may be a little bit better.

The last is that of over-use of stub-ended yards. The New Haven has an unusual number of stub-ended yards, and with the carrying of a 30 or 35 per cent. increase of traffic it has been necessary to do some switching and train work in them that we want to remove from them.

Now, that has been very largely accomplished, but at some points we want to add a few more double-ended tracks, so that we can pull cars in, classify them and take them out at the other end; and that will enable an improvement in the quality of service again. In other words, there will be less instances where cars will be delayed.

The New Haven has made an unusual effort with regard to the economies.

In a broad way, this is indicated by comparisons commencing as of June 30, 1914, between ton miles and freight train miles, passengers one mile and passenger train miles, and commencing December, 1917, back of which the data has not been figured, showing man hours in the transportation department and in the
642 service as a whole.

Ton miles and passengers one mile show, generally, large increases. Train miles show decreases. The comparison shows that, notwithstanding the large increase, train miles and man hours are less today, with the much larger traffic, than when the comparisons were commenced. This is indicated in the following tables.

This shows for the years to June 30, 1915, 1916, 1917, then the calendar years 1918, 1919 and 1920, in which November and December are estimated.

Total net ton miles, second column: 2,722,000,000; 3,066,000,000; 3,478,000,000; 3,911,000,000; 3,948,000,000; 3,711,000,000.

Freight train miles for the same years: 7,437,000; 8,419,000; 8,788,000; 8,025,000; 7,002,000; 6,975,000.

Passengers one mile: 1,496,000,000; 1,589,000,000; 1,729,000,000; 1,843,000,000; 2,034,000,000; 2,166,000,000.

Passenger train miles: 15,890,000; 15,961,000; 16,179,000; 14,243,000; 14,692,000; 15,376,000.

Man hours, for December, 1917, 1918, 1919, and 1920, estimated:

Transportation Department, 5,071,000; 4,609,000; 4,469,000; 4,050,000.

Total, 10,509,000; 9,822,000; 9,752,000; 9,285,000.

643 The handling of an increased volume of traffic with a decreased mileage and force is certainly not inefficiently. One of our troubles is that the man on the street does not know the

figures just given or realize what they indicate. When he finds some imperfection, he is liable to be influenced by past reputation. He does not realize that a greater proportion of a largely increased volume is better handled than ever before.

There will always be imprefections. They progressively constitute a less proportion of the whole.

Witness may say, as a matter of information, that they have established a "bogey," which they want to reach; and that is to give their patrons as good service as they would expect to get if there were a multitude of carriers all striving to give better service than the others, and if they are successful in carrying forward the plans they have followed in the past they will reach that "bogey."

They have about reached the limit in increases in economies with the present plant and traffic. And witness says that because, through this plan for development they have, among other things, adopted the use of larger power. That larger power has been obtained and is working, and it will probably prove to be power that will be economical and be used for a large number of years.

644 Therefore, a continuation of the big lift in the way of changes in cost of operation is very largely behind them. That does not mean that there will not be more or less of what witness has termed "trimmings;" and they are certainly after them as energetically as they have been heretofore after the bigger features.

Asked what happened in 1920 to increase the passenger train miles over the generally downward trend of 1915, the witness said:

"There has been an increase in passengers one mile. It is primarily due to a larger volume of traffic movement. It, however, should be noted that if the New Haven could have the price levels of a few years ago on labor, fuel and supplies, the mileage basis instead of per diem, its progress in efficient and economical operation would place it today on a dividend basis, and it would not now be an applicant before the Commission."

The annual report of the witness to his stockholders for the year 1919 accurately states operating conditions, if the report is read and considered as a whole. The report shows much progress in operating capacity and efficiency. It must not be overlooked that the report is as of a year ago. The matters shown as more necessary have been accomplished. The 40 engines were delivered and

645 put in service last summer. Much of the Cedar Hill yard has been in service throughout the year, and large use has been made of the yard at Providence. Both are showing good results.

Operating costs for recent months, therefore, carry the benefits accomplished from the carrying out of the recommendations in the 1919 report. In other words, the New Haven has reasonable capacity, and the progressive record shows the favorable trend in its operation. In looking ahead, they are confronted with a situation in which these matters are largely accomplished. Therefore, they do not have new additional advantages to look forward to, to anywhere near the same extent that they have had heretofore.

The construction of the Cedar Hill yard and the Providence yard does not enable them to discontinue other yards and junctions, but they do enable more advantageous handling of the through movement of freight and the classification pertaining to the same. Their presence enables some transfer of work which lessens the former burdens on some of the smaller yards.

In this connection, at the hearing yesterday evening, when terminal costs and C. N. E. statistics were referred to, the C. N. E. is operated practically as a part of the New Haven, although it is a separate corporation and its statistics are kept separately.

646 The Central New England leased from the New Haven a number of years ago the New Haven track from Hopewell to Danbury. This was done in order to work out the assignment and use of train and engine crews. Since then the situation has changed, but the contract, which is nothing but an operating instrument, continues in effect. Therefore, in the statistics that traffic moving over New Haven rails between Hopewell and Danbury is credited to the Central New England, and that is the heavy part of their line; and, should that credit be taken away from them, it would be found that their statistics would be quite different from what they are.

For September, 1920, the operating ratio of the New Haven for all business was 88.4 per cent.; for passenger, 80.8 per cent.; for freight, 94.7 per cent. For October, it was, total, 90.5 per cent.; passenger, 85.1 per cent.; freight, 94.5 per cent.

These are combined Central New England and New Haven averages. These show that the passenger traffic is paying its way much better than freight; that the cost of freight operation as a whole is absorbing nearly the entire revenue from freight. It shows also that an average operating ratio may give no indication whatever as to what is actually happening in respect to a certain class of freight.

647 The New Haven problem is strictly and entirely one of transportation. The character of the service and the demands of the public are such that the transportation feature must be followed intensively and diligently every minute of the 24 hours. Having been a superintendent for a good many years, in charge of the transportation department, and general superintendent, that is the feature of the matter which appeals to witness more strongly.

Now, it does happen, as has been explained, that it has been necessary in the last few years to apply a number of improvements to the New Haven Railroad, and an improvement is not an engineering proposition. It is a facility to aid and enlarge and expedite and economize transportation. Looking at them with some engineering experience and knowledge of transportation necessities, witness is free to say that it has been rather interesting to work them out and see how far they could make the limited dollars they had to spend go and to get the most out of it and the greatest transportation advantage. Of course, the answer on the part of the public, so far as the New Haven is concerned, is that first they want service. Next, they want it at as low a price as they can get it. Of course,

financially, the answer is what is left in net income, and that depends largely on what you are able to do with transportation.

In order to pay the fixed charges the New Haven would
648 have to have, roughly, an operating ratio of 80, 81, or 82, or somewhere along in there.

The principal item of expense which came into operation since the establishment of these divisions, which has borne heavily upon them, is the per diem instead of mileage, approximately $6,250,000 a year, for the New Haven and the Central New England.

The suspension of per diem during the period of Federal control in connection with the New Haven reduced their expense account, because during that time they generally had more cars on the road than they owned; but prior to 1915, the New Haven just about broke even. There were some 8 months during 1919 in which they about broke even on cars, and today, and for some little time, they have been handling their business with somewhat less cars than formerly. That is due to improvements they have put on the property. Cars were not more unduly delayed during the period of Federal control owing to the suspension of per diem than they were before that time. There was no difference, because there was precisely the same endeavor to handle every car as rapidly as they could, per diem or no per diem. During the early part of Federal control, and during most of it, traffic was running heavier than ever before, and during the early part they had not commenced to receive quite the same benefit from improvements in the way of additional power
649 and equipment as during the latter part and during the present year.

Another principal change is the increase during the past few years on the amounts paid to other carriers for the transportation of fuel. For the New Haven and the Central New England this amounts to $3,050,000.

Increases in revenues are less in comparison with other roads, because advances have been more liberal on freight. The New Haven's revenues from freight are, roughly, one-half; those of its connections more nearly three-quarters—about $7,300,000. These total about sixteen million and a half, but there is another very large item which affects the New Haven very seriously under present conditions, and that is incident to the difference in character of service. Pay rolls, also other costs, accrue much more rapidly because of distribution and short hauls than do the ton miles accrue on which revenue increases are based. Long haul traffic in heavy trains makes revenue units rapidly, while pay roll increases are not so fast. More short haul trains to distribute the same tonnage make pay rolls rapidly, and revenue ton miles slowly. Terminals, junctions and stations make pay rolls fast, but no ton miles whatever. Rapidly expanding costs from these causes have far out run revenue increases. This has destroyed the former basis of equality in
650 respect to revenues and expenses, as between the New Haven and its connections.

Considering pay rolls only—which is but a portion of this greater cost—the amount is at least $9,000,000 a year.

Assuming that one-half the fuel is used for freight, the preceding items, only, total $24,075,000 of adversity in freight service. While approximate, they are illustrative.

There is some information that is illuminating on the question of total pay rolls. The total pay rolls amounted to $33,584,000 in 1916; $40,124,000 in 1917, when man hour comparisons were started. With fewer man hours in 1920 (December being estimated), the pay roll is estimated to be $83,800,000, or more than double the 1917 figure.

The total estimated amount of transportation charges which the New Haven will have to pay on its fuel to other carriers for the year 1921 is, roughly, $6,700,000.

Consideration has been given to converting the locomotives of the New Haven into oil burners. They have done a great deal of figuring on that, not only for their locomotives, but for their power houses. They equipped one of their tugs with oil burners about a year ago. After they got it into service they found that the price of oil got up so high that they questioned whether or not
651 they would have to put it back into coal. Well, they did not, and witness thinks from this on they will be able to get oil at a price where they will about break even on that tug and another which they are converting. But that is under favorable circumstances, because they can send the tugs in to the oil docks down at New York Harbor and fuel direct. They are figuring on the possibility of getting oil that comes into Eastern territory for power houses on the east end of the line, and then propose to apply it to the switching service, etc., on the east end of the road. Although the question is a live one with them, the prices are not yet such that there is any economy.

On the basis of the data collected in connection with the application in Ex Parte 74, the amount that it was estimated the New Haven and Central New England would fall short of earning 6 per cent on their property investment accounts, according to the joint statement prepared by representatives of the New England roads, approximates $15,600,000.

Asked how much this amount would be increased if instead of taking the property investment account six per cent had been figured on the basis of the valuation of the New Haven in accordance with the information that has recently been submitted by the Bureau of Valuation, witness said that it would be roughly six per cent of the $120,000,000 excess shown in Mr. Hulme's testimony in the rate case, or an increase of the item of $15,600,000 to $22,800,000. That would be based on the New Haven's property used for transportation. Asked what his estimate of the New Haven's present deficit is after all charges estimated for the year commencing Sept. 1, 1920, witness replied that his present estimate is $17,342,616. It differs slightly from the former estimate that was submitted, because that estimate was based on the year commencing November 1st, instead of September 1st, and because the estimates have been remodeled on the basis of later information as to costs, revenues and prospects. This estimate assumes a much heavier

traffic coming in the spring. They hope the commercial
652 situation will improve and that traffic will be produced accordingly. In making their estimate they were somewhat optimistic in respect to that feature.

On the present basis of operating results, the additional revenue which the New Haven would have to have to earn 6 per cent on its property investment account is about $24,900,000. In witness' opinion the present divisions of the New Haven Railroad on its freight interchanged with the trunk line roads are not at all fair or adequate. The reasons are that the New Haven is not only failing to secure a fair return upon its property investment account, but is actually handling inter-trunk line freight at less than cost; and this is a leak so large that the New Haven is threatened seriously—in fact, it is in an impossible position—until this leak is stopped.

Asked why he attributes this leak to the traffic interchanged with the trunk lines, the witness said:

"I do so as a matter of conclusion from certain data which I will outline.

"Passenger has been shown to be more supporting than freight. We have made a separation between freight and passenger for a number of years, and at all times the passenger has carried its way much better than freight, and a good many times freight as
653 a whole shows expenses in excess of revenue."

The average operating costs, the average revenue per revenue net ton mile, and the operating ratio on freight, not including car hire, show the following:

N. H. and C. N. E.

	Cost.	Revenue.	Operating ratio.
September	$.018696	$.019739	94.72%
October	.018824	.019912	94.54%

The New Haven's ton miles subdivide approximately; the hauls average; and the revenue based on eleven months, including May 31, 1919, adjusted to basis of present rates, show-, as between Inter-Trunk line, Intra-New England, and Local: Inter-trunk line, 80.7 per cent; intra-New England, 6.8 per cent; local, 12.5 per cent.

Average Hauls, in Miles.

Inter-Trunk Line	136.29
Intra-New England	65.32
Local	60.11

Average Revenues per Ton-mile.

Inter-Trunk Line	$.01553
Intra-New England	.04371
Local	.6123

The average revenue per ton mile varies in the last figure, or, say, just slightly from those figures which I testified to before, as
654 a result of extending the computations and securing an average over a longer period of time.

Concerning the remarks last night, practically all of that Cape business and Provincetown business and Providence oil and the boat business is moving on those higher rates which I quoted for local and for intra-New England.

Attention is invited to the comparative longer average haul for local.

This arises quite largely from the operation of motor trucks which are taking the shorter hauls or the class of local that is generally admitted to be less desirable and less profitable.

The foregoing represents New Haven and Central New England combined.

The average haul witness gave for inter-trunk line, 136 miles, represents the distance traversed by the New Haven and the Central New England combined. It does not include any mileage in trunk line territory, itself.

There is a lot of motor truck business throughout Massachusetts and Rhode Island in the case of short hauls; where they have good highways, where they can pick the freight up at the door of the shipper and deliver it to the door of the consignee, probably there is an economic use. The motor trucks are taking the kind of business that pays the highest rate, giving the New Haven the highest revenue per ton mile.

655 There are two classes of that local business, the shorter haul and the longer haul. It is taking more of the shorter haul and leaving more of the longer.

In witness' opinion there is an economic situation there which he thinks they should face. He thinks it is a desirable thing for the railroads to accept that situation. Of course, the objectionable feature for them is that you might say they honeycomb the revenue by taking part of it, but they have to continue to render service in order to take care of the smaller amount that they do not take. So, for the short haul, where it is economical for the motor truck to take it, their thought is that they should take it, and then that there should be such an adjustment of the rates by the railroad so that if they are required to take it when there is a storm, or occasionally when the weather conditions are adverse, that the rates should be high enough so that the compensation would be a little better than it has been in the past.

Relatively, the witness thinks that the short haul freight requiring two terminal handlings, handling by the warehouse labor, sometimes by peddlers on the road, is relatively more expensive and less desirable, and those feature change as the haul increases.

656 Witness thinks the final economic outcome of the matter will be that they will be relieved of it entirely up to the point where economically it should and will go by motor truck; so that not only the New Haven Railroad, but all railroads, can cut out the expense for still continuing to handle the remnants of the trade.

As the short haul business becomes less, the expense per ton mile for handling grows greater. Witness would not say they are seriously affected in that regard, because the growth of traffic has brought other traffic to their freight houses, so that generally the forces are engaged.

Asked whether he feels that they are losing money on the 12½ per cent of ton miles which he has called local, the witness said:

"When I look at the length of haul, 60 miles, and realize that the shorter haul, which is relatively the more expensive to handle, is going largely by motor truck, the rest of it looks like pretty good traffic."

Asked to go ahead, the witness said:

"Roughly, the gross from freight for the same year ending May 31st, 1919, from which the previous data are derived, adjusted to present rates, bear approximately the following relation:

Inter trunk line	$43,025,000	54.0 per cent.
657		
Inter New England	$10,400,000	13.0 per cent.
Local	$26,300,000	33.0 per cent.
Total	$79,725,000	

"Summarizing, the preceding shows that freight as a whole scarcely pays its way; that approximately 46.0 per cent of the revenues are produced by approximately 19.3 per cent of the ton miles.

"While, of course, there is a difference in the characteristics of local, it is to be noted that the average revenues per ton mile for intra-England are substantially three times that for inter-Trunk Line. Each has but one terminal handling. The conclusion is inevitable that the large loss is from the 54 per cent of revenue derived from 80.7 per cent of the ton miles.

"If the increase, $15,600,000, asked, is granted, this would then mean that 80.7 per cent of the ton miles on such new basis would still produce but 61.5 per cent of the revenues. The New Haven System's average revenue per ton mile on inter-Trunk Line traffic would then become .02099, which is about 48 per cent of its average on intra-New England traffic.

"In an endeavor to see how the average gross revenues per ton mile on trunk and C. F. A. line freight compare with New Haven's, we find the average of 8.92 mills for the calendar year 1919 in
658 the testimony of Prof. Cunningham. Increasing the same by, say 35 per cent, their average as of the present, it then becomes 12.04 mills.

"The present average for the New Haven system on inter-Trunk Line traffic is approximately 15.41 mills, and is but 28 per cent higher. This comparison should be considered in turn, between average ton mile costs on the New Haven and on its connections. From Prof. Cunningham's testimony, on the year 1919, this is

found to be at the rate of 15.51 mills for the New Haven System, which is a combination of his figures for the New Haven and C. N. E., as against 8.6 for the trunk lines; or, costs are 80 per cent higher for the New Haven. From these comparisons, it is apparent the New Haven System is losing largely from its haul of inter-Trunk Line traffic and that it is not so well paid as are its connections when the character and cost of the service is considered. For the year ending May 31st, 1919, the gross revenues on inter-Trunk Line traffic approximated, after adjustment to the present rate basis:

For the New Haven.....	$43,025,000	30 per cent.
Trunk lines and their connections...	$100,375,000	70 per cent.
Total	$143,400,000	100 per cent.

"Granting the New Haven's request, the amount of which
659 would, of course, vary from time to time with the fluctuations of traffic, the above comparisons would become approximately:

New Haven System.....	41 per cent.
Trunk lines and their connections.....	59 per cent."

Asked whether he had given considerable study to the question of what method could be suggested to the Commission that would afford a means of determining and applying fair, just and equitable divisions for the New England lines with their connections, the witness said:

"Naturally that question has been given a great deal of study. The present thoughts have not changed from the ideas of what was desirable when the terms of the Transportation Act became known, and are that a plain, simple solution is necessary. Some precedent for the same has already been established. Under Federal operation, settlements between railroads were made on road-to-road per cents. The records and the machinery therefore exist for reinstating that method or for obtaining a general view of the situation between railorads resulting from the combination and the many details involved. From the Transportation Act, certain thoughts result as to the implied obligation that rates and divisions should be such that they will fairly support the systems of transportation. Obviously
the basis for the purpose must be more or less flexible and it
660 must be workable. The Act contemplates not only a national system of transportation but anticipates the possible necessity of readjusting divisions, having in mind the amount of revenues required from interline traffic to pay its reasonable proportion of operating expenses, taxes and a fair return on railway property held for and used in the service of transportation, as between participating roads. This cannot be accomplished within reasonable time through the individual consideration of a multiplicity of rates and divisions. It should be recalled that road-to-road per cents were in effect until near the termination of Federal operation and very likely may have

been in mind in the preparation of the Transportation Act. It appears to be a simple method for the purpose. We know that it is a practicable method, because for a number of years the plan has been in effect between the New Haven and the Boston & Maine.

"Another method is that of increasing present divisions by graded per cents., which Mr. Campbell outlined."

The volume of loaded cars coming into the New Haven is very, very much larger than the volume of loaded cars which go out over their system,—roughly, five coming in to two out.

The New Haven has no control over the loading of the incoming cars. Their average is based quite largely on what is done
661 by their connecting lines and shippers on connecting lines, on loading cars into their territory.

The purchase of railroad fuel, including the obtaining of the delivery at destination, during the past few years, has been exceedingly difficult, and witness would infer that it has applied probably to all railroads. The New England lines have been under a further disadvantage, due to their difficulty in obtaining the transportation of their fuel during times of weather adversity or strikes, over connecting lines. In that way they have suffered, as has any other private person who is having his fuel transported over a foreign line. Because of that, they have been obliged, at times, to purchase spot coal, perhaps to a greater extent than would have been necessary if the mines were on their lines. In the case of the New Haven, during the past season, with the marine strikes at New York Harbor, and many of the terminals on their connections, and some of their own labor difficulties, and with the cry all around for more coal cars, they found it necessary to float a considerable portion up Long Island Sound. The water rates on transportation of fuel are distorted very badly as compared to what they were before war times. In floating the coal, which they did in quite a large volume, up Long
662 Island, they figure that they were at a little increase in cost, as compared with hauling it all-rail to the same gateways. But, when they come to compare the costs of coal, which usually are a combination of mine price plus transportation, the more you extend the transportation over foreign carriers, the higher the sum of those two elements. If they get coal at Maybrook or Harlem River, they set the cost up as the mine price plus transportation to those points. If they float it to New Haven or Providence, they set the cost up as the mine price, rail to tidewater, and a third element, tide up to those gateways where they discharge it and take it on to their own rails.

In further explanation of the program followed in respect to fuel, the best grades obtainable are bought, because, on account of high cost of transportation over foreign lines, they cannot afford to transport inferior grades. During the war they were compelled to accept large quantities of fuel less satisfactory in grade than formerly. This has also been particularly true during a considerable portion of the present year. Recently, with the change in market conditions, they have been able to control the grade of coal much better. Under present contracts the situation is very much better, and any new

contracts will be based entirely on first class grades, which they used to confine themselves to entirely. At the commencement of
663 the present coal year contracts were made for quantities somewhat in excess of requirements. Deliveries did not hold up fully. Some of the causes are of the character which witness has outlined. Some spot purchases were necessary, but they were for relatively small amounts. While their supply was at times threateningly short, they endeavored specially and succeeded fairly in securing contracted coal, thereby minimizing quite largely purchases at higher prices, in order to keep transportation moving. When service Order 18 was issued, they lost some contracts and were obliged to make some others, but as a result of the readjustment of contracts they found themselves to still be covered at average prices slightly below $4.40 per net ton at the mine. The average cost during the season had risen gradually to this average. These contracts were in effect until March 31st, but deliveries on some of them are not keeping up. Prices on some have been changed by mutual agreement since the change in the coal market and some spot purchases have been made at quite favorable prices considered in comparison with those of a few months ago. The result today is an average price of not far from $3.75 per net ton at the mine. Contracts are now being considered for the ensuing coal year with an estimated reduction, they now hope, averaging $1 a ton, as compared to the year past.
664 The reduction in the average price is being reflected in the present cost of operation. A still further reduction is expected, and has been taken into account in estimating the operating results during the remainder of the constructive year ahead. During the past season the somewhat poorer grades of coal caused some increase in consumption and until the decided change in the coal market they were apprehensive that they might be compelled to suffer a continuation, but the present indications are that they are now getting back to a control of satisfactory grades.

The quantity of coal used at the eastern end of witness' line, at the power houses, is relatively not very large. Their really large power house is at Cos cob, where they develop electricity for their electrical operation on the New York division. They have power houses for electrical operation between Providence and Fall River, and then they have a power house at the Readville shops and at the South Station; but, as power houses go, they would not be deemed large.

Asked whether he had made a careful study of other possible means of relief which the New Haven may find than a just and equitable adjustment of these divisions, the witness said:

"We estimate that we can secure about $2,000,000 a year from local revenues, which we think can be increased. That
665 is a matter which was covered more fully, and in more detail, by Mr. Campbell."

Witness refers to the Anderson scale, and some subnormal rates, and their ticket change, and has been over the matter with Mr. Campbell and concurs with his views.

They are hoping that soon there will be further relief from ex-

press. Probably that is the hope of all other railroads. They have been studying this matter with the view of seeing how far they could go without taking steps which would be beyond what you might call general level. For example, there might be a 4-cent passenger fare. That might produce, roughly, $5,000,000. They figure that that might be an answer to some other necessity, but they figure it is not an answer to the handling of inter-Trunk Line traffic below cost.

The standard passenger fares are now 3.6 cents per mile.

According to witness' understanding, the present fares from the passengers going to and from Grand Central Terminal and to and from the Boston Terminal, pay for the upkeep of those terminals, so far as the interest of the New Haven in those terminals is concerned. Witness says that because the revenues from passengers as a whole are sufficiently below its expenses as a whole, so that there is some margin. Witness is assuming that the margin, in part, is
666 available to take care of the terminal expenses.

Witness does not think the local pasenger business is carrying itself in and out of either of these terminals.

It has been exceedingly difficult to secure increases in local rates in and out of Boston; the trip tickets are one instance of that. The same is true with respect to New York, although witness understands there have been some previous endeavors. He is not familiar with them, except to say that in a general way there have been previous endeavors. But, in a general way, in respect to the local travel in and out of Boston, and in and out of New York, they estimate that it is moving at less than cost, and that sooner or later—and in their opinion as soon as possible—the revenues must be brought up, because people are moving from the city to the suburbs, taking advantage of the combination of cheaper and better living conditions, plus a rate of passenger travel which is too low. That rate for passenger travel must be brought up, so that the basis will be established so that the railroad can go along permanently; in other words, so that it will not be outgrown still more by reason of the suburban development with low passenger rates. These tickets in and out of Boston constitute the first step in that direction.

Asked whether there were any other resources, the witness
667 said:

"We are practically against the wall. Of course, we have a little collateral recently released by the Director General, but its value depends entirely on the earning power of the New Haven."

Asked how they were ever going to pay back if they borrowed on that, the witness said:

"That is our thought, that if we are forced to borrow on it, the basis of the Transportation Act is a limitation on returns to transportation companies, to 5½ or 6 per cent., or around there, and it will be almost impossible to accumulate a sum to pay off later any debt that might be so occasioned at the present time. We cannot help but feel that the foundation under the solution of the transportation problem of southern New England is that of reasonable

compensation out of the joint rates for the handling of the large volume of inter-Trunk Line freight, which we are satisfied we are handling at a loss."

Asked whether, with reference to the improvements made on his road, the expenditures for better facilities, yards, motive power, and so forth, the inherent problem that is presented by the terminal characteristics of witness' road, and the additional burdens which recent years have placed upon it, still remain, the witness said:

668 "At the present time they certainly do, and they are intensified."

The introduction of these better yards or better motive power or facilities is going to solve the question of handling the large volume of traffic; they have already solved that, because, during the last year and this, except for abnormal situations, they are moving the maximum volume of traffic.

Looking forward to this year ahead, and estimating it upon the combined revenues of the two roads, the Central New England and the New Haven will fall short, by something over $17,000,000 of the fixed charges. Witness has taken those things into account. They are reflected in their costs of operation of the last few months. They have taken into account the savings on coal, and have estimated the savings which will result from the new economies they may put into effect as the result of the falling off in the volume of business.

Asked whether there is any further statement he cares to make, the witness said:

"Realizing the intent of the Transportation Act to provide national transportation, to provide for the support of such national transportation, and its provisions with respect to rates and divisions, we cannot but feel that when the effect of the combination of
669 rates and costs is found to bear so heavily on a road that its basis of equality as between itself and its connections is changed so adversely and when it is shown, as the New Haven has done, that its inter-Trunk Line traffic is not supporting itself, it is entitled to a fair readjustment, by a change of divisions in the revenues from joint traffic.

"This case is one that could be swamped with details, statements, and figures. I have used more than I hoped would suffice. I have endeavored, however, to show certain general facts and comparisons, in such manner as to show our situation, explain our request, and to indicate its reasonableness."

Recross-examination:

Witness has never made any figures in any attempt to allocate to the interchanged traffic the actual cost of handling that traffic, as distinguished from handling the inter-New England and the local traffic. He does not think that would be possible.

During the past two years the New Haven has been getting fuel

coal through all rail, if it could. When it comes to handling it all rail, it has been not only a question of handling it themselves, but quite often it has been the question of handling by their
670 western connections. The water rate, the sea rate, is so high that everybody has been handling all their local into southern New England all-rail, if they could. That has been the case since, in connection with the war, the Government took charge of shipping. It was about that time that a number of the colliers that had previously operated into New England were taken by the Government, and they took other ships, and the price jumped rather rapidly. That goes back into the latter part of 1917. Prior to that, when they had a 60 or 65-cent rate by water, they handled the fuel for the eastern part of the line by water. The 60 or 65-cent rate was from the Virginia Capes, possibly Curtis Bay, although Curtis Bay is a few cents higher. The coal which they get for their power house by water at Coscob, and any coal which they may get for fuel purposes at New Haven, or any other Sound port, comes from South Amboy, or some New York gateway. When they handled Providence coal by water it came from Chesapeake Bay.

Witness has no knowledge of receiving any fuel coal by water in Buzzards Bay. If they did, it would be insignificant, because they have no facilities there. The larger part that came by water went into Boston, and that came from the general territory of Chesapeake Bay. It was either from Baltimore, Curtis Bay, Newport News, Hampton Roads, or somewhere inside the Chesapeake Capes,
671 rather than from Philadelphia or New York.

In a general way, before the war, the rates from Chesapeake Bay to Providence and Boston would run along from 60 to 70 or 75 cents a ton, and from South Amboy up the Sound, perhaps 25 or 30 cents a ton, or 35 cents. During the war the rates from Chesapeake Bay points to Boston went up to $3, and along the Sound up to 80 or 90 cents. They reached those amounts in the earlier portion of the war. During the past year they stood at about that rate.

In their prognostications as to their operating results during the coming year, they figured on a considerably less rate than that, providing they hauled the coal by water. They probably should haul some coal by water. In making those prognostications they did not figure on hauling any particular amount by water. They figured more on an average rate, because in the practical handling of the thing they would handle the coal in accordance with whatever plan would enable them to do so at the lowest cost.

When witness referred to the percentage of revenue on interchange traffic received by the New Haven and the percentage received by the trunk lines under existing conditions and referred to a proposed new basis under which the New Haven would get 41 per cent. as against a present 30 per cent., and the trunk lines would get 59 per
672 cent. as against a present 70 per cent., he added $15,600,000 to the New Haven proportion, taking it out of the trunk line proportion, and then refigured the percentages.

Asked how he arrived at that $15,600,000 he said:

"If you will refer back to an exhibit in the case prepared by the Committee of Trunk Line and New England road accountants, showing what the New England lines were short, in connection with the rate case, of earning 6 per cent. on their property investment accounts, you will find that figure by adding together the amounts for the C. N. E. and the New Haven."

Witness was not applying any particular method to the divisions, but merely added a certain amount of money designed to produce for the Central New England and the New Haven an amount of additional revenue sufficient to bring their net railway operating income up to 6 per cent. on their property investment, on the basis of the traffic which was then moving.

Asked whether that is the $25,000,000 proposition that has been discussed here, the witness said:

"Well, I do not know that it is. I have been studying this from the New Haven standpoint, and that was the statement of the New Haven's needs to put it on a basis of relative equality in respect to a percentage return on its property investment account; and it
673 happens further that through an analysis we find that that represents pretty close to what we are losing on the haul of inter-trunk line traffic, and that is the reason that we have coupled the two together and have used that amount."

Asked whether he had given any special consideration to the question of whether the fair thing might not be to increase to some extent the through rates, and thereby furnish more money out of which the New Haven might receive additional divisions, instead of taking it out of the trunk lines' proportion, the witness said:

"Yes; I have considered that very carefully; and I have concluded this: that the trunk lines at the present time, as a whole, are earning 3, 4, 5 or 6 per cent. on their property investment account, and if they come out in accordance with the expectation on the award in the rate case they would earn 6 per cent. The New Haven is going broke. Now, the first step, as we look at it, is to allow the New Haven enough out of the joint revenues for inter-trunk line traffic so that it will at least get its carrying cost out of that traffic. After it has done that, there will then be a fair degree of equality between the New Haven and trunk lines, and the New Haven then would benefit somewhat similarly to the trunk lines if there should be an increase in rates, and when the day comes that they are going
674 to be reduced it could still stand the reduction. But today they will figure out and say, 'Well, the trunk lines need 10 per cent. increase,' and they would get a 10 per cent. increase on 75 per cent. of their traffic on which they are earning perhaps their cost and more. What would happen to the New Haven? It would get 10 per cent. increase on half of its traffic which it is handling at a loss, and the solution on that basis would not even give the New Haven a start."

Asked how he thinks that applies to an individual railroad like the Erie Railroad Company, which perhaps in many particulars might make a showing as to costs and operating results quite similar to that made by the New England lines, as a whole, or some of them, the witness replied:

"Now, Mr. Taylor, there have been a good many remarks made here in this hearing that have been as critical and adverse to the New Haven as could be set up, and I am afraid if I should attempt to answer in respect to the Erie I might say something that would not be desirable in the record."

Asked on what basis the New England lines think that revenue should be taken away from any individual trunk line, where it is required by that trunk line for the maintenance of its service, in order to enable the New England lines to perform their service, the witness said:

"We think so for this reason: As a group we are not earning a fair return on our property. The other part of the group is doing very much better. We realize that there may be an Erie Railroad in the middle of that group, but we have in mind this, that what we are asking is not only fair, but that if our connections, who have been so exceedingly friendly in telling us how to go and help ourselves, and become more efficient, and increase submormal rates, and so forth, will take the medicine home and follow out the same plan, that they can accomplish for themselves far more than we who have been forced to do those things for a number of years and have already accomplished them largely, can still further do, and that they, through the program that they assign to us, can pick up a whole lot more than we want, and not only take care of our needs but help themselves in addition."

675

Asked whether this 6 per cent. on the property investment would put the New Haven in a position where it might, in a reasonable time, resume the payment of dividends, the witness said:

"That alone would not enable the payment of very much of a dividend. What I stated was that if the New Haven was still back on the per diem basis, and if it could have saved for itself the benefits of the decreases it has made in train miles, man hours, and so forth, all back at the price level of several years ago, the combination of all of those would enable it to consider a dividend."

676

When the New Haven gets 6 per cent. on its proper valuation, the dividend will be all right. They are not figuring that far ahead. The New Haven is one of the few railroads which is already definitely showing in actual returns to the Bureau of Valuation that its valuation would be largely in excess of its property investment account. They are not asking anything on that, but they are alleging it as a circumstance in favor of the New Haven.

If the New Haven should be obliged to borrow on collateral now in order to pay deficits as they go along from month to month, that

would commence to roll up a debt accumulation from operation. They could never capitalize that and dispose of it by selling bonds or anything of that kind. The only way they could liquidate that debt would be to save from operation in the future. At best their possibility in the way of differences between revenues and expenses is so thin that any debt that they are obliged to pile up in order to keep living, pending the decision in this case and the increasing of other rates, is going to be a burden which, on account of the limitations as to earnings of all railroads, will be exceedingly difficult and burdensome to liquidate as time goes on.

Asked whether he agreed with Mr. Hobbs who was not willing to go into the question of the divisions on individual rates as between individual carriers because he thought that was not the issue in this case, but that the issue was the division of the revenue produced by the through rates as a whole between the New England complainants and their western connections, witness replied:

"It seems to me that it would be impossible to reach any conclusion on this case from a consideration of each individual rate, and that they must be considered on some basis which will take them on the whole as between roads."

Asked whether he meant consideration as between individual trunk lines and the individual New England roads, or as between the New England group and their connections, witness replied:

"Well, if they were between the individual roads, the matter would be approaching a more permanent basis, and if it needed correction in the future there could be then further adjustments one way or the other in order that, whatever the equities were, they might be protected. Now, certain information has been set up for the New England railroads as a group. Additional information has been furnished by the roads individually; so that in the final solution of this matter I have an idea that, exercising its discretion thoroughly in the matter, the Commission, if it does anything, may act on some lines which will be in the direction of permanency."

677 HOWARD S. PALMER, a witness for the complainants, testified:

Direct examination:

That he is the Comptroller of the New Haven Railroad, and has been connected with that road 13 years, always in the accounting department.

Asked to state what study has been made to ascertain the revenue ton miles and the revenue per ton mile for the New Haven and the Central New England, subdivided between local, interline and trunk line business, the witness said:

"Prior to June, 1919, we figured the revenue tons on a waybill basis, making two separations: First, local, and second, interline. Now we

have prepared a statement for the 11 months ended May 31, 1919, month by month, showing the information for the local, and have taken four months, October and November, 1918, and January and April, 1919, on inter-New England business, and we have taken the percentage of that and separated the intra-New England from the interline other than New England for that 11 months' period."

The study referred to by witness was received and marked Complainants' Exhibit 67, Witness Palmer.

The result of this study shows that the rate per ton per mile on local traffic was .0 123, on inter-line New England traffic .01371, on inter-line other than New England .01541. This takes into account the last rate increase that was allowed. Witness took the eleven months' period because there were no large rate increases there. That was just after the Railroad Administration increase in June, 1918. He has equated those averages to rates under Ex Parte 74, allowing the full 40% increase on local and New England inter-line, and 37% increase on intra-trunk line. The reason for allowing only 37% increase on the latter was that from studies that have been made by their freight people, and especially by their auditor of revenue who had many years' experience in freight accounting business and who was under instruction to very carefully consider the matter—that was prior to setting up figures for this particular case—he said recently, and earlier, that in his opinion 37% was all that was being realized, or approximately the figure that was being realized. 1% on this traffic amounts to roughly $500,000. If the inter-trunk line business were increased another per cent the figurre of .01541 would be increased to .01552½. If the full 40% were realized, it would be increased to .01575. In arriving at 37% the auditor of accounts took into consideration the inter-group business with the south and west, and one of the factors was the fact that the New Haven is not getting any increase at the present time on its steamer Maryland arbitraries westbound. This matter witness understands is now under consideration by the Traffic Executive Committee. The New Haven is getting the increase on the steamer Maryland arbitrary eastbound because they make the divisions and take the money, but westbound the other roads make the divisions and are keeping the money. Witness is not prepared to discuss other items bearing upon the 37%.

Referred to the exhibit submitted by Mr. Brigham, No. 62, showing the New Haven's deficit below fixed charges as $15,867,468, and the Central New England as $1,475,148, the witness stated
678 that he had for the New Haven the figures available to show how those estimates were arrived at.

The detail sheet for the New Haven, by the principal accounts, was received in evidence and marked Complainants' Exhibit 68, Witness Palmer.

He offered like figures for the Central New England, which were received in evidence and marked Complainants' Exhibit 69, Witness Palmer.

In preparing Exhibits 68 and 69, in endeavoring to make a forecast for the year which will end August 31, 1921, he based this upon the actual figures of September, October and November, 1920, and for the balance of the estimated year it is an estimate.

He took into account in the preparation of that the reduction in coal prices. He took into consideration economies and also very sharp reduction in forces and in pay-rolls; and not only that, but arbitrary reductions as well that have not yet been made.

They started late in August to make very sharp reductions in their expenses, and between August 26th and December 9th they dropped in all departments approximately 3,700 men. That makes a reduction in the payroll on a weekly basis, including the proportion of the monthly payroll, from approximately $1,819,000 per week to $1,474,000 per week, or, in round figures,, $345,000 per week.

679 In addition to considering those reductions, they have made in their estimate deductions for what they consider will have to be arbitrary reductions in their expenses in order to meet the situation, reductions that have not yet been worked out, but which must be.

Cross-examination:

In preparing Exhibit No. 67, the witness took the months of October and November, 1918, and January and April, 1919. He tried to take reasonable months. So far as he knows, there was no particular motive other than to get a fair average.

The exhibit is a combination of the Central New England and the New Haven statistics. If they had taken the New Haven they would undoubtedly have shown a much better showing. They took the system. The haul on interline other than New England undoubtedly would have been very materially decreased—the average haul—if they had taken the New Haven alone.

The local is negligible on the Central New England, so if they had taken the New Haven alone as to local, the witness doubts if there would have been any effect. It might have been a mile one way or the other. The witness is inclined to think that the local would have been in their favor, if they had taken the New Haven only.

680 In computing the revenue as to local and intra-New England witness assumed that the full 40 per cent. increase was realized, but in computing the revenue on the interline other than New England he assumed that only 37 per cent. increase was realized.

In connection with Exhibits 68 and 69, the weekly reduction in the payroll of the New Haven, $345,000, is an accomplished fact. They are still reducing, and as the witness said, they made arbitrary deductions. For instance, in the month of May, they took out $225,000; June, $325,000; July, $325,000; and August, $325,000. Those are not in sight, but they went on their reduced volume of business, and they considered the results that were being obtained and in their estimation have got to be obtained even to meet this

result. This was arbitrarily done by the accounting department, but the figures were shown to the general manager, and it is witness' understanding that the operating department not only have been many times in conference over this whole situation, but they are again going over the entire question of expense, and they have made deductions right and left in the situation to come to the result that they have.

The reference just made by witness to the months of May and June refers to next May and next June. It is a part of his statement purporting to be an estimate for the year ending August 31, 1921. Witness made arbitrary wage deductions for those particular months for the purpose of this statement. Whether they would be realized or not is quite a question.

Asked what was the basis of making the arbitrary deduction and whether it was an assumption that the volume of traffic would be reduced, witness replied:

"First, we reduced expenses on account of reduced volume of traffic; and, second, this reduction was made because we felt that it had just got to be done in order to keep going along. It was not a question of whys and wherefores; it was a question of absolute necessity. How it will be done is a question of all departments."

That arbitrary deduction as to number of employees is to be made for the month of May next. In June he has made a further arbitrary deduction "based on everything—that is over and above everything in sight now. There are other reductions that have been made during the entire year based on what we have have done and what we feel it is possible to do and is being done."

Asked what deduction he had made on account of fuel coal, witness said that in this statement which is based on conditions in the last two or three months and upon the latest information available he included in his figures for fuel a charge-out price of $7.78 a ton on tenders for the months of January and February, 1921, and a price of $6.88, roughly, a ton for the period from March 1st
681 to August 31st. The operating ratio for the whole year included the bad months of September, October and November, and what they are sure it is going to be for December. For the whole year, on New Haven, it is only 91.18 per cent.

Witness has made the deduction from revenue on the assumption of declining tonnage.

Of course, September, October and November are actual; they have a good line on December at the present time, and they have taken after March 1st approximately 10 per cent. reduction—it may be a little more, but witness thinks it is less—on freight and passenger revenue; that is, allowing for a reduction of approximately that amount, but at the same time they have allowed for a reduction in expenses which would nominally go along with any reduction in traffic. Of course, if the traffic goes up better, their expenses will go up too, but the net result will be a better showing, of course, than they have estimated.

Express they have taken about the way it is running, and the way they hope it is going to run.

On mail they have allowed for no falling off of business.

They allow for some reduction in express traffic, and have considered the percentage of the business during those months to be nominal for a year, that is, September, October and Novem-
682 ber. They have assumed that they are going to get more than in September and October. They have not allowed for the Commission granting any increase in express rates. They assumed a 10% falling off in freight tonnage after March first, but they built up some of the winter month . They have also assumed a decline in passenger traffic.

Asked what per cent of decline in passenger revenue he assumed, witness replied:

"We have taken as an approximate average on both, combined, from March 1st on, approximately 10 per cent. It may be more and it may be less. I am inclined to think it is less than that, on the two together; and that is more than substantiated by present indications."

Asked whether there were any material deductions allowed other than for wages and fuel, witness replied:

"We have automatically reduced expenses all along the line. Naturally with our reduced business it should reduce expenses in all departments. We have considered that in both the reduction in consumption of material and our open accounts right through, the operating expense accounts.

"I want to point out, too, that roughly the operating ratio that we are allowing from September—or, rather, from March to August—is only 87.65 per cent. That means that we have got to go some on revenues and expenses both in order to realize any such ratio as that. I am simply pointing out that to indicate that whereas we might possibly have erred in some estimate on revenue, we must have correspondingly erred on some estimate of expenses; because if the New Haven road during that period is going to get down to an operating ratio from March to August of 87.65 per cent under present indications, it is a pretty good record, in my opinion."

With regard to materials other than fuel, witness stated:

"We have made an automatic reduction in material used; and whether we would say that that included a reduction in price or wholly a reduction in quantity, I imagine that both of them are taken into consideration."

Asked with regard to percentages of deductions for material costs other than fuel, the witness said:

"We went at it in this way: We have reports from probably 60 different sources—expense reports, including open accounts, pay-

rolls, and so forth. We took and followed for a period of months the total expense from those different sources; we saw the reduction that had been made; we got estimates or talked with the larger departments having control of those expenditures, and then we said to ourselves—sometimes with their agreement and sometimes they did not think it could be done—we said, 'Now, that has automatically got to come down,' and we would reduce that on a sliding scale, first on account of our estimated reduction in traffic which was furnished by the traffic department, and we made such deductions in November and December. They have not been realized; nowhere near realized; but notwithstanding that we hope that they will be realized in the future.

"As an illustration of our cash in our December business, between the last date of November and the 25th day of December our
683 cash from our agents fell off, when we thought we were conservatively estimating for the use of Mr. Pearson and the directors—as a matter of fact we could not conceive how it could be any lower than we were estimating—it fell off $1,000,000 per month in actual cash. Now, we check up our estimates on income by the cash receipts for the different periods. As you will appreciate, if we see our cash from agents consistently dropping—I don't mean spasmodically, but for a period of a week it keeps going down—we know that revenue is coming down. It may not come down in that week or the next week, but it is coming down, and we are correspondingly guided by the same indication when the cash from our agents is going up."

This statement is based on the depreciation rates that went into effect March 1st, and is based on all other expenses and revenues as they stand today, with the known factors and the estimated reductions in expenses and tonnage that they have been able to foresee.

The mere increase in the rate of depreciation as to the New Haven alone added about $1,400,000 this year.

The rate of depreciation has been considered for a considerable period of time and the question of changing it was practically decided on somewhere near a year ago last summer.

Mr. Pearson, when Federal Manager, asked witness a number of times as to the justification for any such low rate, and witness got out a great deal of data and he himself could not justify such a low rate.

684 Witness has not taken into account increases in non-operating income for the sale of properties under court orders. Witness cannot see how their sale would affect the income account.

Motion to Dismiss.

And now at the close of the complainants' case come the defendants and move to dismiss so much of the cause (and of the amended complaint) as is based upon, and as relief is prayed for on account of, the averments contained in paragraph VIII of said amended com-

plaint and the proof presented in support thereof because this Honorable Commission is without power or jurisdiction to grant the relief prayed for, or any part thereof, on account of said averments or proof.

And the defendants further move to dismiss so much of the cause (and of the amended complaint) as is based upon, and as relief is prayed for on account of, the averments contained in said amended complaint other than paragraph VIII thereof because the complainants with respect thereto have failed to make out a prima facie case or to offer proof entitling them to the relief prayed for or any part thereof.

And the defendants further move to dismiss the case as a
685 whole and the whole amended complaint for the reasons stated in the paragraph last herein preceding.

Adjourned, subject to notice.